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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 374

CHARLES F. HARAD, and SARA E. HARAD, Co-Partners Doing Business as INDUSTRIAL ENGINEERING ASSOCIATES,

Petitioners,

vs.

SEARS, ROEBUCK & CO.,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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The Scheffer Press, Inc.—ANdover 3-6850

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OPINION BELOW.

The findings and conclusions of the District Court are set out in the Transcript of the Record at pages 510-22, 528 and 529-30; the District Court rendered no opinion. The opinion of the Court of Appeals for the Seventh Circuit is reported at 204 F. (2d) 14 (R. 546).[1]

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[1] For ease of reference, a reference to the Transcript of the Record in the trial court will be abbreviated by the letter "R", a reference to the book of exhibits entitled "Appellant's and Appellees' Exhibits—Appendix To Appellant's Brief" will be abbreviated by the letters "BE", and a reference to the Appendix to this brief by the letter "A".

JURISDICTION.

The jurisdictional statement set forth on page 2 of the Petition for Writ of Certiorari is not challenged.

QUESTIONS PRESENTED.

Under the heading "Questions Presented" on page 2 of the Petition for Writ of Certiorari, Petitioners have failed to set forth the precise questions apparently sought to be answered in Petitioners' "Reasons For Granting The Writ" set forth beginning on page 10 of the Petition.

Instead of at this point enumerating the questions presented, Petitioners have listed four items purporting to be findings of the trial court. Respondent notes that two of these purported findings (2 and 3) were not "found" by the trial court. Number 2 is erroneous as Respondent was not found to be a "distributor" for Petitioners. Number 3 is erroneous as Respondent was not found to have "suddenly dropped" Petitioners nor to have "substituted an imitation of Petitioners' product." Respondent makes further comment on these statements hereafter in this brief.

From a reading of the Petition it is believed that Petitioners intended to present at this point the following questions:

1. Does the decision of the Court of Appeals for the Seventh Circuit in this case conflict with the decisions of the Court of Appeals for the Eighth Circuit?

2. Is there one yardstick for measuring unfair competition for the large business man and another for the smaller business man?

STATEMENT OF THE CASE.

INTRODUCTION.

This is a common law suit for alleged unfair competition and trade-mark infringement brought against a retail and mail order merchandising concern (hereafter referred to as SEARS), by Petitioners, a supplier of a truss which for about two years was sold by Sears (Petitioners will hereafter be referred to in the singular as Harad). Harad's unpatented truss was *not* suddenly dropped by Sears and a new truss substituted therefor, as alleged in pages 4 and 10 of the Petition. On the contrary, after notice to Harad of its intention, Sears continued to offer Harad's truss along with a new, improved and patented truss, the two trusses being offered through different branches of Sears' business (R. 392).

The specific complaint of Harad was that Sears' catalog advertising of a new truss was similar in character to Sears' prior catalog advertising of Harad's truss, despite the fact that in both advertisements Sears offered the product only as a SEARS APPROVED (a registered Sears' trade-mark) truss and displayed no reference to the manufacturer in either case (A. 44, 47, 49).

As a make-weight, Harad, in an amendment to the complaint, threw in a charge of trade-mark infringement, alleging (R. 23) that a picture of a runner with the words ACTIVE MAN—CHICAGO on the new truss constituted an infringement of Harad's descriptive trade-mark SPORTSMAN, registered only on the Supplemental Register under the 1946 Trade-Mark Act over one year *after* Harad filed his complaint in the District Court (R. 501).

Although the trial court adopted Harad's view of the case, even to the extent of assessing statutory treble damages (R. 531-533) (notwithstanding that this was *not* a

statutory but a common law action), the Court of Appeals repudiated the judgment of the trial court, calling the trial court's findings as to secondary meaning *"clearly erroneous"* (R. 551); calling the trial court's finding that Sears' trade-mark was an imitation and an infringement of Harad's SPORTSMAN trade-mark *"clearly erroneous"* (R. 553), and also calling the trial court's findings of actual confusion *"clearly erroneous"* (R. 554). The Court of Appeals (R. 550), emphatically stating that *"the undisputed documentary evidence shows the direct contrary"* of the findings of the trial court with regard to the catalog advertising complained of, held that Sears had used, separately and in combination, in the advertising of Sears' trusses long before and up to the time that Harad entered the truss business, all of the advertising features claimed by Harad to have been plagiarized by Sears.

The Court of Appeals' conclusion, therefore, was that Sears had not wronged Harad as alleged and completely reversed the judgment of the trial court.

A reading of the Petition for Certiorari in this case, we submit, fails to reveal any ground whatever justifying this Court's granting of the writ.

THE FACTS.

For a period of over thirty years SEARS sold trusses, including the "elastic" type involved in this case, for the relief of rupture or hernia, in both its retail stores and through its mail order channels.

Sears' mail order customers make their selections from Sears' catalogs. Sears advertised in those catalogs trusses manufactured by the world's largest maker of trusses and other leading truss makers (R. 133, 164, 165). Regardless of the maker of the particular truss, Sears' catalog advertising carried the name of Sears, Roebuck and Co. and

Sears' registered trade-mark, SEARS APPROVED, for trusses and surgical goods. It became customary for Sears not to disclose the maker's name in Sears' catalogs (BE. 22-47; R. 274; A. 34-41).

During this period a style of illustrating and advertising trusses in its catalogs was developed by Sears, as well as by the entire truss industry, and certain advertising features became common in the trade. Cuts of the trusses were illustrated showing, without exception, the truss belt in an oblique loop arrangement with its straps hanging either loosely or attached to the truss. The common crescent, round or egg-shaped pads were illustrated and featured with the trusses. Line drawings and photographs of men engaged in physical activity, at work or at play, were originated and used in the truss ads to illustrate that a sufferer from hernia or rupture could be active again if he wore any one of the numerous Sears' trusses. Undraped figures of the human anatomy were utilized to impart scientific information and to instruct the purchaser in the wearing of the truss. The common and obviously successful advertising feature of descriptive statements in columnar formation preceded by dots was employed by Sears. Slogans were originated and used, such as LEAD AN ACTIVE LIFE and PERFECT FIT FOR YOUR COMFORT, etc. (BE. 1-35, 65-73; R. 140, 146, 152, 187, 188, 195, 214; A. 34-41).

All of these features, *viz.*, the illustrative cut of a truss with the truss pads (which the evidence disclosed always has been and is the only way of illustrating a truss (R. 140, 182), but which Harad claimed he originated), the line drawings and photographs of men at work and play, such as golfers, bowlers, laborers, farmers, etc., figures of the human anatomy, descriptive statements in column formation preceded by dots, and the slogans denoting active life,

comfort, perfect fit, etc., were used by Sears IN COMBINATION as well as singly to sell SEARS' APPROVED trusses (BE. 1-35; A. 34-41).

For example, in Sears' 1945 catalog, all of these features were used IN COMBINATION to advertise Sears' trusses (A. 34, 35). In Sears' 1943 and 1946 catalogs all but one feature were used (BE. 21; A. 37, 38). This same pattern of advertising was found in Sears' catalog truss advertising as far back as the year 1929 (BE. 5-35; R. 195, 196). These features were paid for, owned and originated and the art work created and the ideas developed by Sears and not by the makers of the many trusses Sears sold under its name.

Sears' trusses and other surgical goods were sold, at mail order, packaged in Sears' conventional blue and white carton, usually bearing Sears' registered trade-mark. Here also the maker was not identified on the carton or on any literature in the carton (R. 193, 194, 195).

In 1947, Harad began to sell an unpatented truss, which bore the word SPORTSMAN within an oval (R. 44, 410). Registration of that word as a mark on the Principal Register was refused by the Patent Office as descriptive and Harad acquiesced in such rejection, accepting registration on the Supplemental Register under the 1946 Trade-Mark Act (such registration issuing over one year and two months *after* the lawsuit in this case was filed) (R. 501).

Sears first ordered Harad's truss in the summer of 1947 (R. 263, 264). The contact with Sears was made by Harad's commission salesman, Louis B. Mack, who previously had sold surgical goods for others to Sears' surgical goods buyer, A. J. Steier (R. 216, 412). Mack also sold the Harad truss to Montgomery Ward & Company (R. 99). Contrary to Harad's statement (Petitioners' Brief,

page 4), Sears was not a "distributor" for Harad, but merely purchased the product for resale to the consumer.

The truss delivered by Harad to Sears' mail order houses was packaged in Sears' distinctive *blue and white cartons* (A. 30; BE. 57), conventional for Sears' surgical goods, including trusses, as mentioned above. In accordance with Sears' practice, these cartons had conspicuously printed thereon in three places Sears' registered trade mark, SEARS APPROVED, and also the words SEARS APPROVED TRUSSES ARE SOLD ONLY BY SEARS, ROEBUCK AND CO. Included in the carton was a three-page circular bearing Sears' trade-mark (BE. 79). Neither the carton nor the circular bore either Harad's firm name, address or alleged mark nor did they in any way identify Harad as the maker. Concurrently, Montgomery Ward & Company packaged, sold and advertised the Harad truss in Ward's Green and White carton as "Wards New Athletic Truss" (R. 124, 125, BE. 63). Harad packaged his truss for resale in retail stores in a *red and black* carton (A. 32). These cartons had printed thereon Harad's firm name, "Industrial Engineering Associates", his address and his mark, SPORTSMAN within an oval. A two (and later three) page circular, bearing Harad's firm name, address and alleged mark, was included in this red and black carton (A. 58).

Harad's truss was of the "elastic" type which Sears and the industry had sold for many years (R. 134, 142; BE. 5-35; A. 29-41). Every feature was old, both alone and in combination (R. 134, 155, 156; A. 29). Trusses of this type had not changed much basically in the last 100 years (R. 139). Harad recognized that no exclusive rights on the article could be established inasmuch as he never prayed for an injunction against Sears selling a similar product, although he alleged in his complaint but never proved that his truss was unique and distinctive (R. 2, 23).

Sears proceeded to advertise for about two years in its mail order catalogs the trusses supplied by Harad (A. 44, 47, 49), in much if not identically the same manner as it had advertised other trusses in the past (BE. 5-35). The catalogs involved were Sears' 1948 and 1949 catalogs in which all of Sears' trusses, including Harad's, were advertised (A. 44, 47, 49). As it had done in the past and was currently continuing to do with the trusses of other makers, Sears advertised the Harad truss under the SEARS APPROVED registered trade-mark. In Sears' 1948 catalogs (A. 44, 47), the Harad truss was illustrated by a cut in the same manner as all other Sears trusses and it carried a line drawing of a golfer and of a shoveler. These line drawings were carried over from prior Sears' catalog advertisings of trusses from other sources, *viz.*, the golfer from Sears' 1946 catalog (A. 38) and the shoveler from Sears' 1947 catalog (A. 41). In Sears' 1949 catalog advertising of the Harad truss (A. 49), the truss was again sold under the SEARS APPROVED trade-mark and carried a line drawing of a bowler and of a farmer which had been created by and previously used by Sears (R. 178, 180; A. 35), descriptive statements in column formation preceded by dots and the customary illustrative cut of the truss and pads, all in a manner similar to that previously originated and used by Sears to sell other trusses. *Nowhere* in any of Sears' catalog advertising did Sears use either Harad's firm name, address or SPORTSMAN mark or in any way whatsoever identify Harad with the truss (A. 44, 47, 49).

The undisputable documentary evidence disclosed, as we have stated above, that in advertising Harad's truss in Sears' catalogs Sears had merely continued its customary style of advertising and selling its SEARS APPROVED trusses. The evidence also disclosed that Harad obtained the advertising features for the circular (A. 58) in-

cluded in his red and black carton (A. 32) from Sears' catalogs. For example, the golfer on his circular came from the 1946 catalog (A. 38). The drawing of human anatomy in the circular came from Sears' 1943 and 1945 catalogs (BE. 22; A. 34); the columnar statements preceded by a dot were also taken from Sears' 1943 and 1945 catalogs. And, finally, his slogan, RUPTURED? WEAR A SPORTSMAN ATHLETIC TRUSS on his circular bore marked resemblance to that used by Sears for its trusses in its 1943 catalog—ARE YOU RUPTURED? WHY NOT WEAR A SEARS TRUSS? (BE. 22), as well as to the slogan in Sears' 1946 and 1947 catalogs (A. 38, 41) where Sears said in advertising its trusses, RUPTURED? YOU CAN STILL LEAD AN ACTIVE LIFE. WEAR A SEARS APPROVED TRUSS. PERFECT FITTING FOR YOUR COMFORT.

In 1949, when his commission contract with Harad expired, Mack and a Chicago hernia specialist, Dr. Russell Winters, designed a new truss and pads (R. 223, 224, 323, 333). These new pads were so unique and revolutionary that the Patent Office issued letters patent and Mack sold the truss to Sears and others. This new truss bore a trade mark featuring a picture of a runner surmounted by the words ACTIVE MAN—CHICAGO.

Pads are the most important part of the age-old elastic type truss (R. 226). Whereas the Harad truss pads were conventional, crescent shaped like a quarter moon, the patented Mack truss pads were novel and distinctive (R. 226). The Mack truss pads had three contact points, based on the example of a surgeon holding the patient's hernia with three fingers while the patient coughs (R. 226). Also, the connection of Mack's pad to the truss shield was made fool-proof by two studs rendering it impossible for the pads to swivel out of proper position (R. 227). (Sears had

a number of returns on the Harad truss arising out of structural failures) (R. 220, 281).

On December 8, 1949, Sears notified Harad by the following letter (R. 392) as to Sears' intention to *sales test* the Mack truss through some of Sears' branches of mail order, the while continuing to sell Harad's trusses through its other branches:

> "Dear Doc: We have completed our plans regarding the Sears' Approved Athletic Truss which we purchase from you so far as the Spring 1950 mail order and retail season is concerned. These plans involve #1325 and 1326, trusses as follows:
>
> Both numbers are listed in our 'X' Flyer catalog which is released to our customers approximately January 1, 1950, and has a sales period through March 30, 1950. All houses.
>
> Both numbers are listed in our Spring general catalog which is released approximately January 1, 1950, and continues through June. Philadelphia and Boston only.
>
> Both numbers are authorized for our retail stores for the Spring 1950 period, January through June.
>
> For your information, we are sales testing a truss similar to yours in our Spring 1950 General Catalog, all houses, except Philadelphia and Boston. This truss has been offered to us at a substantially lower price than what we are presently paying you and we feel the quality is comparable. In addition, we believe that this new truss has features not incorporated in the truss which we purchased from you.
>
> After sufficient time has elapsed permitting us to make an analysis of this new truss as compared with numbers 1325 and 1326 trusses, which we purchased from you, we will make a decision as to which of the two trusses we will want to continue promoting. It may be possible that we will want to continue a listing of your truss as well as the one we are purchasing from another source. However, this possibility is very questionable. I personally believe that about March

of next year we will want to make a definite decision on one or the other of the two trusses so we can do a better job for our source by concentrating promotional efforts on the one number.

The promotional program outlined above naturally gives your truss preference over the new one so far as the Spring selling season is concerned and, as a result, your sales to us for this period of time should not be greatly affected by our decision to dropping your merchandise from part of the Spring General catalog branches.

I trust the above is clear to you. However, if you wish any additional information, please contact me."

Less than a month after receiving this letter, Harad sued Sears (R. 2, 78).

In its catalog advertising of the Mack truss in 1950 (A. 52), Sears continued to use and in the same manner all of the advertising features it had always used since 1930 to sell SEARS APPROVED trusses (BE. 5-35; A. 33-44). These were the same features which were originated and developed by Sears and by it owned and paid for, advertising features which had become more or less common in the truss industry. These were the features that Harad himself had borrowed from Sears for his own purposes. Sears used none of the features Harad claimed he either originated, owned, posed or paid for. The Mack truss was advertised as a *NEW* SEARS APPROVED TRUSS and the novel patented pads were prominently displayed.[2] The truss was packaged in a new Sears' blue and white carton (A. 31) and included a new circular, (A. 60), neither of which could be confused with anything previously used by either Harad or Sears.

[2] For a background history of Sears' course and method of advertising trusses over a thirty-year period, see the book of exhibits entitled "Appendix to Appellant's Brief", which is part of the record in the Court of Appeals and has been filed as such in this Court.

The Court of Appeals for the Seventh Circuit reversed the District court's judgment for Harad, a judgment which embraced an injunction, damages and treble damages (although no statute was involved). The Court of Appeals found that:

(1) The undisputable documentary evidence proved that Sears had preceded Harad in the use of the combination of advertising features claimed by Harad and that, accordingly, Harad could not acquire secondary meaning in those features.

(2) The picture of a runner, surmounted by the words, ACTIVE MAN—CHICAGO, is not a substantial duplication of the descriptive printed word SPORTSMAN within an oval; that such marks were shown to be common in the advertising of trusses and that, therefore, there was no infringement of Harad's alleged mark.

(3) No actual confusion on the part of the public was established by the evidence.

(4) Sears had not been proven guilty of unfair competition.

The Court of Appeals found it unnecessary to consider the point that Harad was guilty of misrepresentation in his advertising slogan that his truss was "Designed By an Eminent Physician" which, by Harad's own admission, was false (R. 546-554).

REASONS FOR DENYING THE WRIT.

1. This Decision Does Not Conflict With The Decisions Of The Court Of Appeals For The Eighth Circuit.

Petitioner states as reason for granting the writ that the decision in this case by the Court of Appeals for the Seventh Circuit is directly in conflict with the decision of the Court of Appeals for the Eighth Circuit in 1931 in the case of *Stix, Baer & Fuller Co.* v. *Alfred J. Sweet Co.*, 49 F. (2d) 598. *Not so.*

The only similarity between the cases is that both suits involve questions of trade-mark infringement and unfair competition. There the similarity ends.

The record in the *Stix* case discloses that plaintiff had registered its trade mark "Olde Tyme Comfort" for shoes under the Trade Mark Act of 1905, and had manufactured, advertised and sold countless millions of such shoes throughout the world over a period of 22 years (and we add parenthetically that over a ten-year period plaintiff sold six and one-half million pairs). Defendant, a local merchant, sold plaintiff's shoes at retail to customers who entered the store *seeking that brand of shoe.* In a deliberate and successful attempt to capitalize on the name plaintiff had firmly established in the industry, defendant began to sell a shoe labeled "All Time Comfort", which obviously sounded exactly like plaintiff's mark when spoken. When customers asked for plaintiff's shoe, he was sold defendant's substitute. At the trial plaintiff placed on the stand numerous witnesses and some 26 letters, both of the consuming public and shoe dealers, who testified that the mark of plaintiff is identified with and meant the plaintiff. The evidence from retail purchasers at defendant's store showed unmistakably the actual confusion which was deliberately planned and carried out. Standing alone, the two marks when spoken sounded identical and both the trial court and Court of Appeals emphasized this unfairness and made this the basis for their decisions. *The Stix case presented no element of unfair competition in advertising features, none being involved.*

It is obvious from the foregoing that the decision in the *Stix* case is consonant with the facts disclosed by the record in that case, which facts bear no resemblance to those in the case at bar.

In the *Stix* case, the marks were identical and deliberately intended to confuse; in the case at bar, the two marks, when either spoken or viewed, are poles apart. In the *Stix* case plaintiff's mark was registered on the Principal Register under the 1905 Act for almost two decades before the litigation; here the registration was on the Supplemental Register (having been rejected for the Principal Register), and then over one year and two months after suit was brought. In the *Stix* case actual confusion as to names and products was firmly established by the testimony of witnesses at the trial and by numerous letters; here not a scintilla of actual confusion was established and not one witness took the stand in Harad's behalf on that question. In the *Stix* case plaintiff was first on the market with both product and mark; in the case at bar, both the product, mark and advertising features were common in the industry, and as to the advertising features, *Sears was the originator and Harad the latecomer and copier.* In the *Stix* case the products were indistinguishable; in the case at bar, the truss pads, the main feature of any truss, were as different as day and night, and the new pads were patented. In the *Stix* case plaintiff's shoe was called for by plaintiff's mark; in the case at bar, Sears' catalog ads displayed only Sears' registered trademark and the truss was packaged in Sears' own carton which could not possibly be confused with Harad's. In the case at bar, the mail order customer called for and purchased a SEARS APPROVED truss and relied solely on Sears' reputation and recommendation; in the *Stix* case the public asked for and purchased plaintiff's shoe under plaintiff's name, relying on plaintiff's reputation and the recommendations of plaintiff's customers, not of defendant's.

It is particularly relevant to note here that Harad attached no significance whatsoever to his alleged mark

SPORTSMAN, stating to Sears' buyer that as far as Harad was concerned it was as unimportant as the words "Made in Japan" (R. 246).

We respectfully submit that there is no conflict whatever in these two decisions for the simple reason that there is no resemblance in their facts. On this ground alone the petition for writ of certiorari should be denied.

Furthermore, the decision in the case at bar is wholly in accord with all of the decisions in the Court of Appeals for the Eighth Circuit on similar facts, and we mention here only a few:

Seven-Up Co. v. *Cheer-Up Sales Co.,* (Seven-up case) 148 F. (2d) 909, (8 Cir., 1945) *cert. denied,* 326 U. S. 727.

Skinner Mfg. Co. v. *General Foods Sales Co.* (Skinner case) 52 F. Supp. 432 (D.C., Neb., 1943) *aff'd* 143 F. (2d) 895 (8 Cir., 1944).

J. C. Penney Co. v. *Lee Mercantile Co.,* (J. C. Penney case) 120 F. (2d) 949 (8 Cir., 1941).

International Heating Co. v. *Oliver* (Oliver case), 288 Fed. 708 (8 Cir., 1923).

Viavi Co. v. *Vimedia Co.* (Viavi case) 245 Fed. 289 (8 Cir., 1917).

In the *Seven-Up* case, plaintiff's registered mark was for "Seven-Up" and defendant's registration, issued 7 years later, was for "Cheer-Up". Both marks were used on similar soft drinks and their containers were in each case virtually identical 7 oz. green glass bottles with fused labels permanently affixed to the glass. The court denied relief for trade-mark infringement and unfair competition for the reasons (as in the case at bar) that the names were dissimilar and no instances of actual material confusion or mistake were introduced.

In the *Skinner* case, plaintiff had used the name "Raisin-Bran" on breakfast cereal for 17 years and spent almost a million dollars advertising it. Sales exceeded one and a half million dollars a year. Defendant, 17 years later, used the words "Raisin-Bran" on its product. Finding the mark in suit, "Raisin-Bran", for breakfast food merely descriptive and not a good trade-mark, the Court of Appeals there denied plaintiff relief for trade mark infringement and unfair competition, on the authority of *Kellogg Co.* v. *National Biscuit Co.,* 305 U. S. 111 (1938) and *Steem-Electric Corp.* v. *Herzfeld-Phillipson Co.,* 118 F. 2d 122 (7 Cir., 1940).

In the *J. C. Penney* case, the Court of Appeals denied an accounting and relief for unfair competition where (as in the case at bar) no instances of actual material customer deception were proved.

In the *Oliver* case, the charge of unfair competition was on the ground that defendant's advertisements were similar to those of plaintiff's in both appearance and wording, so that the public would be misled and deceived. There, as in the case at bar, the advertising of plaintiff carried plaintiff's name and that of defendant's carried defendant's name. In reversing the trial court's decree for the plaintiff, the Court of Appeals said at page 712:

> "But a customer obtained through an advertisement must of necessity read the advertisements to become acquainted with the article advertised and to know the name and address of the advertiser. * * * No sensible person acquainted with plaintiff's advertisements would believe that the defendant company was advertising and selling plaintiff's burner."

In the case at bar, as in the above *Oliver* case, Sears' catalog advertising carried only Sears' name and Sears' registered trade mark and its method of advertising was

similar, if not identical, to its method of advertising trusses for over 30 years. Harad was in no way identified with the truss and Sears' catalog purchasers could know only that Sears was advertising and selling a Sears' truss.

In the *Viavi* case, as in the case at bar, the unfair competition charge was plagiarism of "books, charts, circulars and printed forms." In denying relief to the plaintiff, the Court of Appeals said at page 292:

> "The material used is common in the domain of the proprietary medicine business, and, as no copyright is relied upon for special protection, the plaintiff has no monopoly of these forms of expression."

We refer the court also to the leading case of *Allen B. Wrisley Co.* v. *Iowa Soap Co.*, 122 Fed. 796 (8 Cir., 1903), for another decision by the Court of Appeals for the Eighth Circuit supporting Sears' position.

Likewise, the decision of the Court of Appeals in the case at bar is consonant with decisions in the other circuits, in the United States Supreme Court and in the Court of Appeals for the Seventh Circuit itself. We cite only a few here:

Kellogg Co. v. *National Biscuit Co.*, 305 U. S. 111 (1938).

Coats v. *Merrick Thread Co.*, 149 U. S. 562 (1893).

Kellogg Co. v. *Quaker Oats Co.*, 235 Fed. 657, (6 Cir., 1916).

Mathews Conveyer Co. v. *Palmer-Bee Co.*, 135 F. (2d) 73 (6 Cir., 1943).

American Fork & Hoe Co. v. *Stampit Corporation*, 125 F. (2d) 472 (6 Cir., 1942).

Distillers Brands, Inc. v. *American Distilling Co.*, 26 F. Supp. 988 (D.C., N.Y., 1938).

G. H. Mumm Champagne v. *Eastern Wine Corp.*, 142 F. (2d) 499 (2 Cir., 1944), *cert. denied*, 323 U. S. 715 (1944).

Sinko v. *Snow-Craggs Corp.*, 105 F. (2d) 450 (7 Cir., 1939).

S. R. Feil Co. v. *John E. Robbins Co.*, 220 Fed. 650 (7 Cir., 1915).

Zangerle & Peterson Co. v. *Venice Furn. Novelty Mfg. Co.*, 133 F. (2d) 266 (7 Cir., 1943).

We believe the foregoing conclusively shows that there is no conflict in the lower courts with respect to the matters involved in this case. Rather, issuance of the writ in this instance would only create a conflict. Pertinent here is the language of Mr. Justice Frankfurter in *Darr* v. *Burford*, 339 U. S. 200, 225 (1950):

> "It is, of course, one of our functions to resolve conflicts among the lower courts. But it is not our duty to stimulate such conflicts."

The case of *Schlitz Brewing Co.* v. *Houston Ice Co.*, 250 U. S. 28 (1919), cited by Harad (Petition, p. 13), supports Sears' position. It is noted that Harad, not only before the Court of Appeals for the Seventh Circuit but also here, lifts a literary *obiter dictum* from the Schlitz opinion (Petition, p. 13) in support of his position, unmindful that the decision of Supreme Court in the *Schlitz* case was against Harad's position.

In the *Schlitz* case, plaintiff was the first brewery to use amber or brown bottles for beer. Defendant later adopted a brown bottle for its beer and also had a brown label, the same as plaintiff's. Plaintiff's label was attached spirally and defendant's was set around the bottle. In affirming a judgment for defendant, the Supreme Court held such acts not to constitute unfair competition because

plaintiff had no exclusive right to the claimed features and because the method of attachment of the labels was different.

The breaking of the "fagot stick by stick" mentioned by the court had no application in the *Schlitz* case and likewise has none in the case at bar. The Court of Appeals broke no "fagot stick by stick", the evidence being undisputed that Sears used *in combination* long before Harad what Harad adopted from Sears and then sought to claim as his.

The action taken by the Court of Appeals in the present case, where all the pertinent evidence was documentary, followed the principle enunciated by the Supreme Court in *U. S.* v. *U. S. Gypsum Co.,* 333 U.S. 364 (1948), interpreting the principle set up by Rule 52(a), Rules of Civil Procedure, wherein it was stated at page 394:

> "It was intended, in all actions tried upon the facts without a jury, to make applicable the then prevailing equity practice. Since judicial review of findings of trial courts does not have the statutory or constitutional limitations on judicial review of findings by administrative agencies or by a jury, this Court may reverse findings of fact by a trial court where 'clearly erroneous.' The practice in equity prior to the present Rules of Civil Procedure was that the findings of the trial court when dependent upon oral testimony where the candor and credibility of the witnesses would best be judged, had great weight, with the appellate court. The findings were never conclusive, however. A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed."

The Court of Appeals said, in its opinion in the case at bar:

"The findings must of necessity rest exclusively on the documentary evidence mentioned, and the undisputed contents of the advertising matter of Harad and Sears. *Orvis* v. *Higgins,* 180 F. (2d) 537 (2 Cir., 1950)." (R. 551).

After examining and considering all of the documentary evidence, the Court of Appeals in the case at bar said:

"We feel on consideration of all the evidence in the record, that a mistake has been made and that the findings of the trial court in this regard are clearly erroneous. *U. S.* v. *U. S. Gypsum Co.,* 333 U.S. 364 (1948)." (R. 553).

2. The Established Rules Of Unfair Competition Apply To All Businesses, Small Or Large.

After sifting out all of the chaff of the petition, it appears that Harad's principal hope is for the sympathy of this Court, based on the aspiration that a new and *special* rule of law should be laid down for the "back-yard business man" (Petitioners' expression, Brief—page 12) to replace the law as it now exists and has always existed and which applies to all businesses, small and large.

Harad's request in this regard, if granted, would require erasure of the motto inscribed over the portals of this Honorable Court—"Equal Justice Under Law"—and would do violence to the familiar judicial oath. Furthermore, this aspiration has no bearing on the facts in this case where plaintiff has sought by judicial process what was denied to him by the Patent Office and which he had failed to acquire from the consuming public. Harad utterly failed in the trial of this case to establish any palming off—as he suggests on page 11 of the Petition, and by assuming evidence absent from the record argues that palming off takes the place of a patent, a technical trademark or the establishment of secondary meaning, so as

to warrant a finding of unfair competition. Harad's argument has quicksand for its foundation and the Court of Appeals properly recognized that argument of counsel will not supplant evidence necessary to establish a case. Pertinent here is the language of the court in *Reynolds & Reynolds Co.* v. *Norick*, 114 F. (2d) 278 (10 Cir., 1940), at page 281:

> "The record is barren of evidence of deceit in the past and there is no fact or circumstance which indicates the likelihood of deceit in the future. To grant plaintiff the relief which it seeks would be to proscribe legitimate competition, not to punish unfair competition. It would be nothing short of extending by judicial mandate the doctrine of unfair competition to the point of creating a copyright for the benefit of plaintiff. That we are not at liberty to do."

No Secondary Meaning Was Shown by Petitioner.

At the trial of this case Harad utterly failed to prove that the arrangement of advertising features heretofore discussed and which were used by Sears in the sale of the two trusses had acquired secondary meaning, conventional or otherwise, for his product. Why? Harad could not because Sears, long before, up to and continuously during Harad's time, had used and continued to use such an arrangement in its advertising of trusses other than Harad's.

Harad would have this Court ignore the fact that the two marks in dispute, the two cartons, the truss pads, and even the trusses themselves, are distinctly different from each other and could not possibly be confused by the purchasing public. Harad introduced no evidence of either palming off, actual confusion or mistake with respect to either the advertising features, the marks or the products.

Harad would have this Court forget the fact that any secondary meaning established as a result of Sears' cata-

log advertising could inure only to Sears and not to Harad. Harad was in no way identified or associated with Sears' catalog advertising, the mail order purchaser of any of the many trusses advertised by Sears purchasing on the basis of Sears' recommendation and reputation. Insofar as the customer was concerned, he was buying a Sears' truss and there could be no possible confusion in his mind as to source, origin or otherwise. Just such a situation, with particular reference to Sears, was the subject of judicial comment in *Meem-Haskins Coal Corp.* v. *Central Fuel Corp.*, 137 F. (2d) 242 (CCPA, 1943):

> "Applicant, under the facts stated, does not bring itself within the operation of that principle. An example of such a situation would be a firm like Sears, Roebuck and Co. or Montgomery Ward & Co., which purchases great quantities of articles and sells under its own trade names, the consuming purchasers rarely, if ever, knowing by whom or where the articles are produced. The purchasers buy solely upon the reputation and responsibility of the vendor and not of the producer."

Harad has complained to this Court (Petitioners' Brief, p. 12) that the facts in this case indicate that Sears failed to take reasonable steps to inform its customers that the Mack truss was not the Harad truss. This wanton disregard of the record, which Harad displayed as well in the Court of Appeals, makes it necessary that Sears bring the true facts to this Court's attention.

(1) The Mack truss, both the actual truss and the picture of it in Sears' 1950 catalog (A. 28, 54), bore Mack's trade-mark of a picture of a runner surmounted by the words ACTIVE MAN-CHICAGO. The picture of the Harad truss in Sears 1948 and 1949 catalog advertising (A. 42, 44) did not bear Harad's trade-mark but was identified solely as a SEARS APPROVED truss.

(2) The novel Mack pads were featured within black rectangular frames in Sears' 1950 catalog advertising of the Mack truss (A. 54), and could not be confused with the conventional crescent shaped Harad pads not so featured in Sears 1948 and 1949 catalog advertising of the Harad truss (A. 42, 44). It is to be remembered that the pads are the main part of the truss (R. 226).

(3) The Mack truss was advertised as a *NEW* SEARS ATHLETIC TRUSS so as to indicate that this was a *new* product. A witness testified at the trial that the word *NEW* in the fashion employed here was standard procedure to indicate to the customer that the product had never before appeared in a Sears' catalog (R. 248).

(4) The conventional blue and white SEARS APPROVED carton used for Harad's truss was modified to a large extent for the Mack truss. (Compare A. 30 with A. 31.)

(5) The three leaf circular (A. 60) enclosed in the SEARS APPROVED carton for the Mack truss (A. 31) was radically different in every respect from and bore no similarity to the three leaf circular (BE. 79) enclosed by Sears in the SEARS APPROVED carton for the Harad truss (A. 30). No purchaser could possibly fail to discriminate between the literature.

(6) Sears instructed its artists in preparing the Mack truss 1950 catalog ad (A. 53, R. 180) that the three views of nude men in black frames, which Sears had used in the Harad truss 1949 catalog ad (A. 49), were *not* to be used with the Mack truss. The reason given was that "These are the manufac-

turer's views and are not to be used with another product'' (A. 53), (and we add parenthetically that these views were not used).

Thus, it is seen that Sears gave careful consideration and took positive steps to make sure that Harad's product and package could not be confused by the customer with Sears' product and package; to make sure that its catalog advertising of the Mack truss contained no elements claimed by Harad. And this even though Sears was under no obligation, legally or morally, to take any steps to change its style and dress of packaging and advertising to accommodate Harad, because Sears never identified Harad in any manner with the truss in its catalog advertising but on the contrary the truss was sold, packaged and described as a SEARS APPROVED truss in a setting which Sears had originated and used for years with other trusses.

In passing, we note Harad's contention that the Court of Appeals failed to disturb a finding of the trial court (Petition, p. 10). *Not so.*

The Court of Appeals held (R. 554) (1) that inasmuch as Sears had preceded Harad in the use of all of the features claimed by Harad, as established by the undisputed documentary evidence, (2) that since Harad's mark was not infringed, and (3) that because no actual confusion was established by the evidence, that therefore Sears was not proven guilty of any unfair competition. Accordingly, the decision of the Court of Appeals necessarily disturbed the finding of the trial court complained of by Harad, for how can a latecomer acquire secondary meaning in the use of features as against one who preceded him in the use of such features?

CONCLUSION.

Respondent believes that the language of Wooley, District Judge, in *Radio Corporation of America* v. *Decca Records*, 51 F. Supp. 493, 497, correctly characterizes the plaintiff here:

> "I am almost persuaded that what the plaintiff dislikes is not what it is pleased to call 'unfair competition', but is any competition at all".

It is submitted that the present case, being a typical private controversy between two parties, involving no conflict of decisions and no constitutional question or other important question of law or public policy, does not warrant further review. As Chief Justice Taft once said, the Supreme Court does not grant certiorari "merely to give the defeated party in the Circuit Court of Appeals another hearing." (*Magnum Co.* v. *Coty*, 262 U.S. 159, 163.)

Respondent respectfully submits that a writ of certiorari should be denied.

Respectfully submitted,

CHARLES LEDERER,
FRANK H. MARKS,
MAURICE B. WOLF,
120 South LaSalle Street,
Chicago 3, Illinois,
Attorneys for Respondent.

APPENDIX.

This appendix consists of copies of a few of the exhibits introduced into evidence in the trial court. For other exhibits referred to in this brief, the Court is respectfully referred to the books of exhibits entitled "Appendix to Appellant's Brief" which are on file in this court as part of the record in this case brought up from the Court of Appeals below.

INDEX OF EXHIBITS

Exhibit No.	Description	Page
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Deft. 76	Picture of Mack truss as illustrated on page 800 of Sears' 1950 Spring and Summer catalog	28
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Deft. 1a	SEARS APPROVED carton in which the Harad truss was sold by Sears at mail order	30
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Deft. 22	Carton used by Harad for the sale of his truss in retail stores	32
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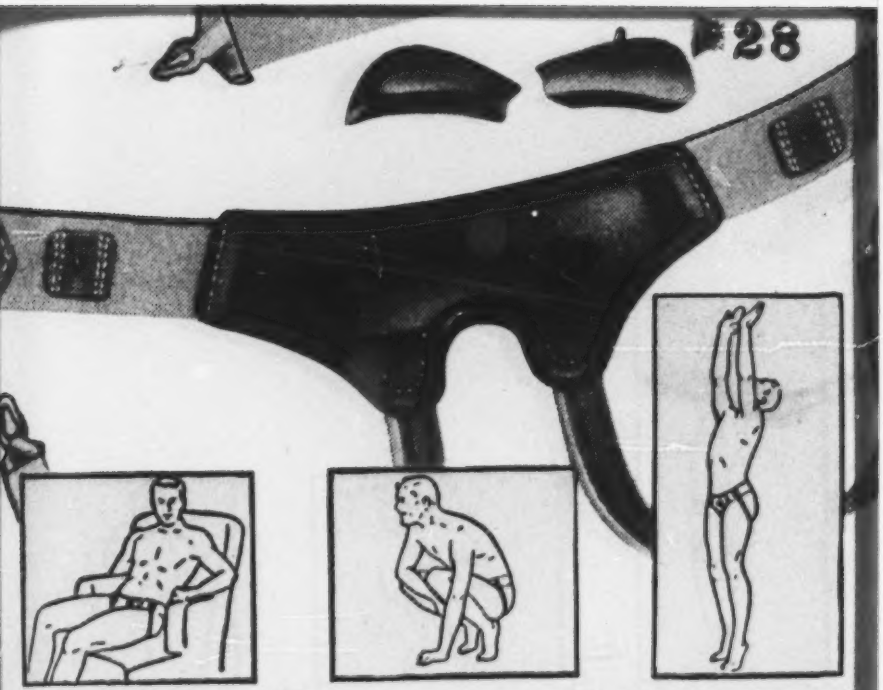
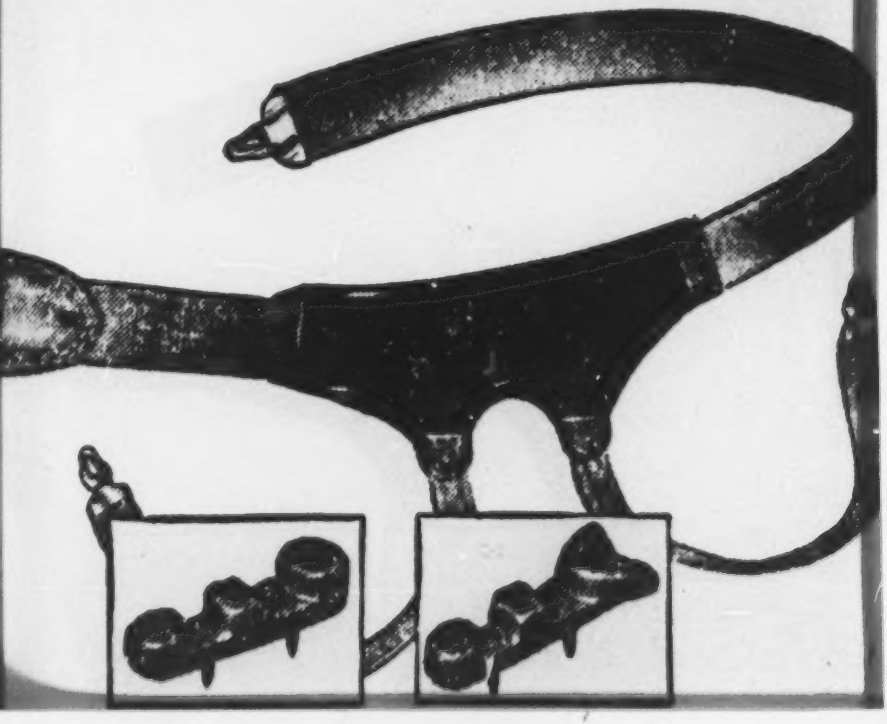
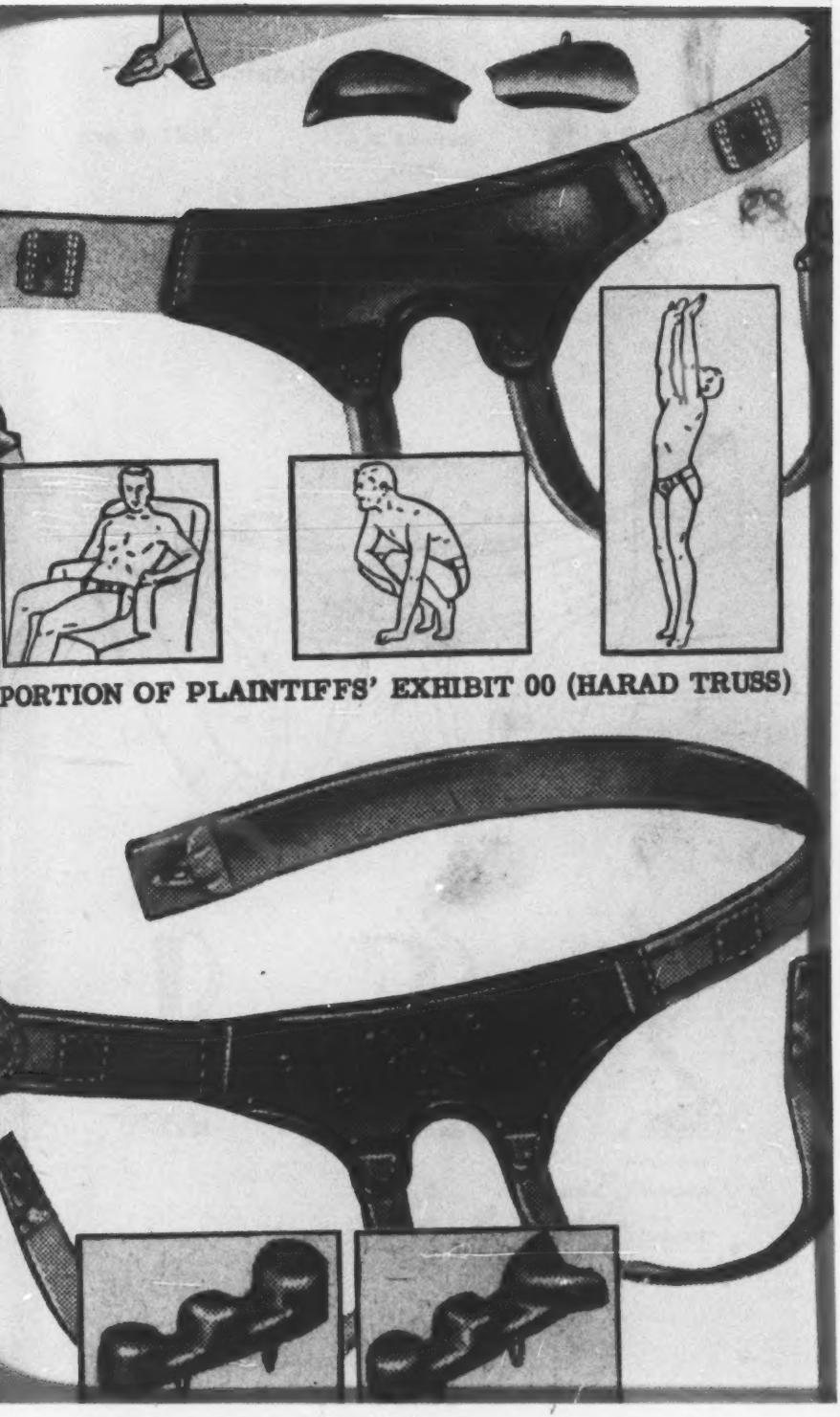
Deft. 30	Pages 580 and 581 of Sears' 1948 Spring and Summer catalog showing SEARS APPROVED trusses, including for the first time the truss supplied by Harad	43
Deft. 34	Pages 1005A and B of Sears' 1948 Fall and Winter catalog showing SEARS APPROVED trusses, including the truss supplied by Harad	46
Plff. OO	Pages 984 and 985 of Sears' 1949 catalog showing SEARS APPROVED trusses, including the truss supplied by Harad	49
Deft. 76	Page 800 of Sears' 1950 Spring and Summer catalog showing SEARS APPROVED trusses, including the truss supplied by Mack. Also, instruction sheet for Sears' artists in preparation of said page 800	52
Plff. TT	Page 958 of Sears' 1950 Fall and Winter catalog showing SEARS APPROVED trusses, including the truss supplied by Mack	54
Deft. 13	Label of Chesterman-Leland Co. registered trade-mark for trusses, in use prior to Harad's time	55
Deft. 97	WINNER and CHAMPION athletic figure trade-mark registrations for trusses, etc., in use prior to Harad's time	56
Plff. JJ-1	Circular enclosed by Harad in SPORTSMAN red and black carton	58
Deft. 7b	Circular enclosed with truss supplied by Mack in Sears' blue and white SEARS APPROVED carton	60

Exhibit No. Description Page



PORTION OF PLAINTIFFS' EXHIBIT 00 (HARAD TRUSS)





PORTION OF PLAINTIFFS' EXHIBIT 00 (HARAD TRUSS)

Defendant's Exhibit 96

29

Aug. 9, 1938. J. E. HANSEN 2,126,550

TRUSS

Filed Aug. 13, 1936 3 Sheets-Sheet 3

FIG. 8.

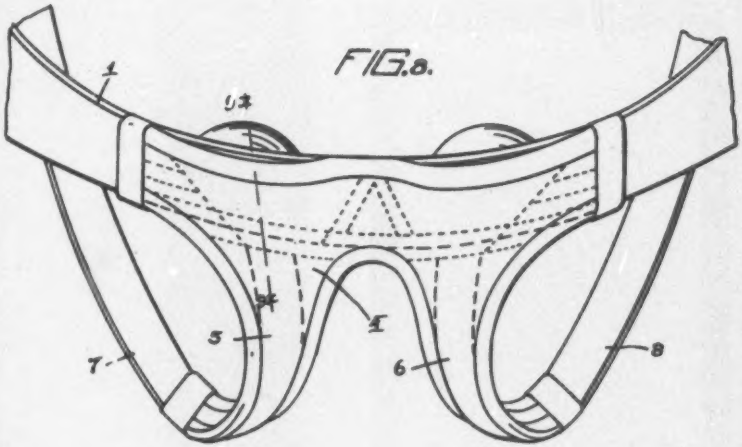


FIG. 9.

FIG. 10.

FIG. 11.

INVENTOR

JULIUS E. HANSEN

BY

ATTORNEY

Defendant's Exhibit 1A

30

Approved

ATHLETIC TRUSS

NO. SIZE

ATHLETIC TRUSS

COMFORTABLE - SELF-FITTING - CAN'T SLIP

Defendant's Exhibit 7A

31

SEARS Approved

ATHLETIC TRUSS

COMFORTABLE • SELF-FITTING • CAN'T SLIP

DESIGNED ESPECIALLY FOR ACTIVE MEN

- Comfortable, Elastic Type Waist Band. Self Fitting
- Solid Rubber Pads—Adjustable. Sanitary, Washable

- Complete With Two Pads for Double or Single Hernias
- Pads Double Annealed To Prevent Slipping

FOR ALL REDUCIBLE INGUINAL OR SCROTAL HERNIAS. *FITTING INSTRUCTIONS ENCLOSED*

SEARS APPROVED TRUSSES ARE SOLD ONLY BY SEARS ROEBUCK AND CO.

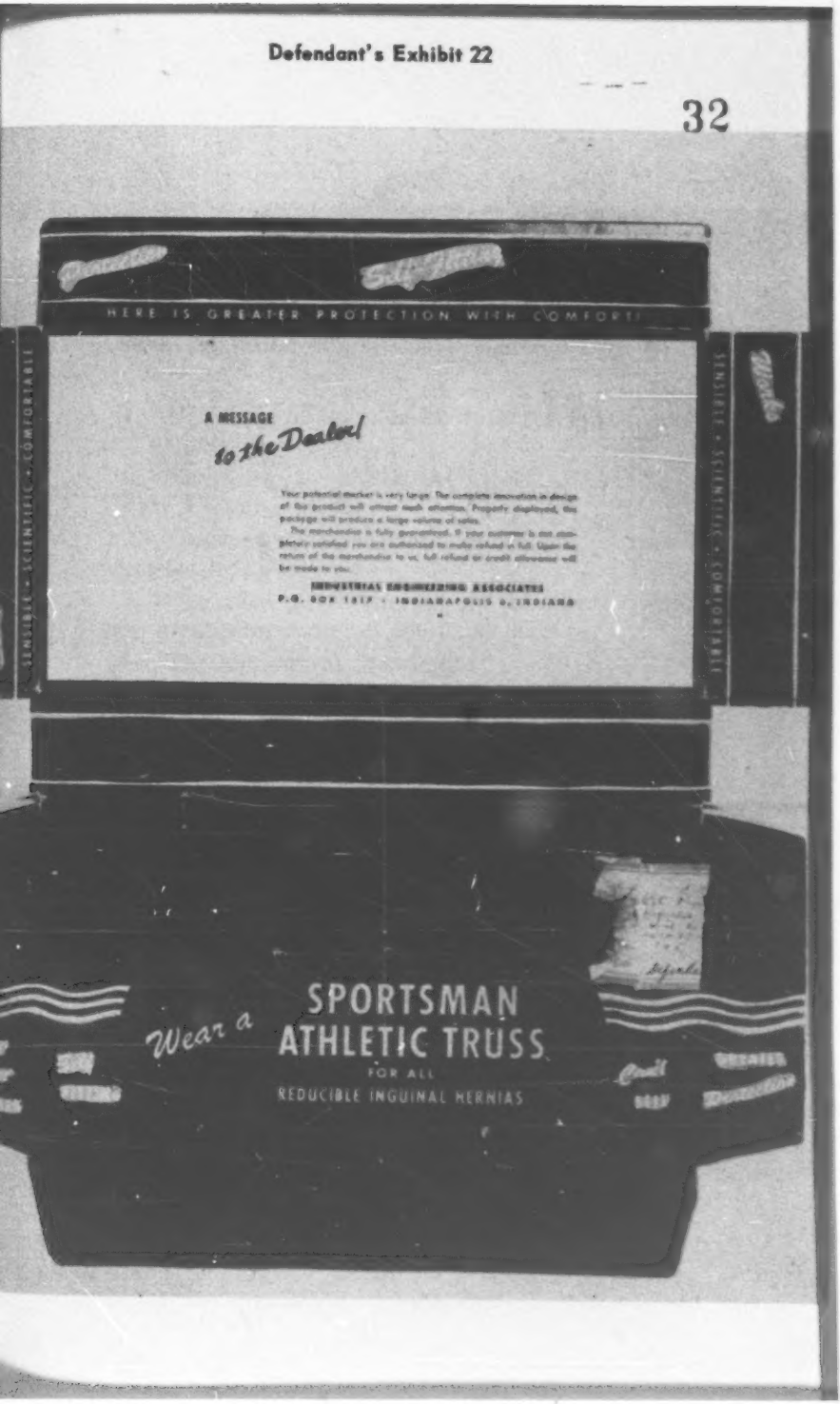
SEARS Approved

ATHLETIC TRUSS

INGUINAL

Defendant's Exhibit 22

32


HERE IS GREATER PROTECTION WITH COMFORT!
A MESSAGE
to the Dealer!
Your potential market is very large. The complete innovation in design of this product will attract much attention. Properly displayed, the package will produce a large volume of sales.
The merchandise is fully guaranteed. If your customer is not completely satisfied you are authorized to make refund in full. Upon the return of the merchandise to us, full refund or credit allowance will be made to you.
INDUSTRIAL ENGINEERING ASSOCIATES
P.O. BOX 1817 - INDIANAPOLIS 6, INDIANA
SENSIBLE - SCIENTIFIC - COMFORTABLE
SENSIBLE - SCIENTIFIC - COMFORTABLE
Wear a
SPORTSMAN
ATHLETIC TRUSS
FOR ALL
REDUCIBLE INGUINAL HERNIAS

The next two pages are pages 480 and 481 of Sears' 1945-46 catalog, describing and illustrating the trusses sold by Sears two years prior to Harad's entry into the truss field. Attention of the Court is directed to the following:

1. Drawings of the men at work (carrying motor) and at play (bowling).

2. The slogan: "I'M ACTIVE AGAIN" and "NOW I CAN WORK".

3. Descriptive statements in column formation preceded by dots.

4. The illustrative cuts of the trusses in oblique loop arrangement and of the truss pads.

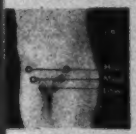
5. The anatomical drawings.

Defendant's Exhibit 79

For proper support and comfort, select a suitable truss

It's easy to get a perfect fitting Truss at Sears

Which style Truss shall I buy?



Ruptures are generally classified into 3 types—high, medium and low. Choose below the style truss which best fits your needs.

Hand style Steel Spring Truss . . . Widely used to restrict high, low or medium-type ruptures.

French style Steel Spring Truss . . . Best used to restrict the medium or high type of rupture.

Scrotal Style Steel Spring Truss . . . A heavy-duty truss designed for low ruptures.

Elastic style Trusses . . . For milder cases of rupture where only mild support is needed.

"Now I can work"

French Style Spring Trusses

GOOD . . . Standard Model

A For high or intermediate ruptures. Leather covered steel spring (3" sweat-resistant, designed to fit contour of the body. Leather covered pad. Adjustable. Even sizes: 32 to 44. See "How to Measure" on opposite page. *Please state (1) exact measurement (2) right or left side.*
$ 3.89 Single
8 D 1362—Shipping weight, 15 oz. . . . . Single style $3.89

BETTER . . . "Grip-Tite" Model

B Special fixture makes pad adjustable to any position. Padded steel spring covered with sweat-resistant cowhide leather. Rubber pad corrugated to prevent slipping. For high or medium-type ruptures. Even sizes: 32 to 44. See "How to Measure" on opposite page. *Please state (1) exact measurement and (2) right or left side.*
$ 4.49 Single
8 D 1385—Shipping wt., 1 lb. . . . . Single style $4.49
8 D 1386—Shipping wt., 1 lb. 6 oz. . . . . Double style 6.98

BEST . . . Adjustable Pressure model

G • Adjustable to regulate pressure
• Anti-slip corrugated rubber pad
• Padded back pad gives extra comfort
• Rust-resistant steel spring covered with high grade sweat-resistant cowhide leather
$8 Sing

This truss, our best model, retains rupture firmly but comfortably in small of back. Rust-resistant steel spring is covered with high grade sweat-resistant cowhide leather. To restrict high or medium-type ruptures. Even sizes: 32 to 42. See "How to Measure" on opposite page. *Please state (1) exact measurement (2) which for right or left side.* Single style only.
8 D 1388—Shipping weight, 1 pound 1 ounce. . . .

New York Style Truss

. . . ightweight, yet . . . ves firm support. . . . ll-elastic cotton . . . ebbing. Leather-. . . overed pad fits right or left . . . de. Understrap holds truss . . . mly in place. Washable. . . . ven sizes: 30 to 42. See "How . . . Measure" on opposite page. . . . *ease state exact measurement.* . . . pg. wt., 8 oz.
$1.39 Single
. . . 1310—Single style . . . $1.39

Boston Style Truss

Two front straps adjust leather-covered pad. All-elastic webbing. Washable. Even sizes: 32 to 42. *Be sure to state exact measurement.* See "How to Measure" on opposite page. Shpg. wts., single style, 11 oz.; double, 13 oz.
$2.59 Single
8 D 1308—Single (fits right or left side) $2.59
8 D 1309—Double style . . . 3.39

"Air-Cushion" Truss

Extra comfortable "air-cushion" pad has soft rubber corrugated surface —won't slip. All elastic webbing. Washable. Understrap holds pad in place. Even sizes: 32 to 42. See "How to Measure" on opposite page. *Please state exact measurement.* Shipping weights, 8 oz. and 12 oz.
$3.48 Single
8 D 1303—Single style, fits right or left side $3.48
8 D 1304—Double style . . . 4.48

Scrotal Style Truss

Adjustable full-size leather-covered pad; 2 tension straps control position and pressure of pad. All elastic webbing. Understrap holds pad firmly in place. Washable. Even sizes: 32 to 42. See "How to Measure" on opposite page. *Be sure to state (1) measurement and (2) whether for right or left side.* Shipping weight, 12 ounces.
$4.89 Single
8 D 1312—Single style . . . $4.89

Womb Suppo

H Lightweight leather, cotton lined; elastic insert. Adjustable side straps, rubber understraps. Hardrubber. . . . nary. Even sizes: 32 to 44. *Be sure to state (also) size of* . . . *diameter (not waist).* Shpg. wt. . . .
8 D 1445—Shpg. wt., 10 oz.

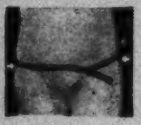
Rubber cup—not illustrated
I 8 D 1474—Pessary
Shpg. wt., 2 oz. Each
J 8 D 1323—Understrap
Shpg. wt., 2 oz. Pair

. . . SEARS, ROEBUCK AND CO., ltd.

Sears offers top quality, perfect fit, low prices

Popular style Trusses for both men and women

How to Measure for Trusses



Stand relaxed. Have someone draw tape measure straight around body in direct line with point of rupture as shown at left. Take measurement over your bare skin; do not measure over clothes. Take easy measurement. Send this exact measurement. (Do not send waist measurement).

Note: If you need a larger size truss than those listed, order your selection at price shown, and we will get it for you at no extra charge. Allow up to 60 days for delivery of special sizes of trusses.

"I'm active again"

Hood style Spring Trusses

Standard Model

For high, medium and low ruptures. Leather-covered pads and springs. Hood front principle; back fastening. Single style has dummy pad on unaffected side. Even sizes: 32 to 42. See "How to Measure" above right. *State (1) exact measurement; (2) right or left side.*

\$5.97 Single

S D 1340—Shpg. wt., 1 lb. 2 oz. ..... Single style $5.97
S D 1360—Shpg. wt., 1 lb. 4 oz. ..... Double style 6.96

De luxe Model "Anti-Slip Pad"

Front and back pads covered with corrugated non-slip rubber. Adjustable leather-covered steel spring. Single style has dummy pad on unaffected side. Even sizes: 32 to 42. See "How to Measure" above at right. *State (1) exact measurement, and (2) right or left side.*

\$7.79 Single

S D 1391—Shpg. wt., 1 lb. 2 oz. ..... Single style $7.79
S D 1400—Shpg. wt., 1 lb. 4 oz. ..... Double style 8.98

Scrotal style Spring Trusses

Standard . . . Single Style

B Soft leather-covered pad. Adjustable steel spring covered with sweat-resistant cowhide. Washable cloth understrap. Designed for low ruptures; gives comfortable pressure and is easily adjustable. Even sizes: 32 to 42. See "How to Measure" above at right. *State (1) exact measurement, and (2) whether for right or left side.*

\$5.89 Single

S D 1341—Shpg. wt., 1 lb. 3 oz. ..... Single style $5.89

De luxe Style . . . "Anti-slip pad"

B Adjustable corrugated rubber-covered pad grips body firmly. Well-padded spring is covered with genuine cowhide leather. Rubber understraps. For low ruptures. Even sizes: 32 to 42. See "How to Measure" above at right. *State (1) exact measurement, (2) right or left side.*

\$6.69 Single

S D 1394—Shpg. wt., 1 lb. ..... Single style $6.69
S D 1395—Shpg. wt., 1 lb. 12 oz. ..... Double style 8.69

London Type Supporter

...support for wear after ...ia operation, as it gives ...support over entire area ...tout restricting abdominal ...muscles. Two large soft pads joined ...ether by knitted elastic. Sturdily ...structed body band is adjustable. ...plied with understraps, to be worn as ...ded. Washable. Even sizes 28 to 44 in. *...ure exact hip measurement (not waist).* ...e "How to Measure", Page 110-114.

\$2.69 Each

S D 1285—Shpg. wt., 12 oz. ...Each $2.69

Post Operative Belt

For wear after operations, for fallen stomach, or for a general abdominal support for those suffering from obesity. Strong buckle back adjustment. Correctly placed straps form a positive lift support to the lower abdomen. Knitted elastic sections on each side. Washable. Even sizes 30 to 48 in. *Measure around fullest part of abdomen* (not waist). See "How to Measure", Page 110-114.

\$4.69 Each

S D 1306—Shpg. wt., 13 oz. ...Each $4.69

Sears Approved

Our de luxe model. Self-adjusting. Seamless rayon pouch shaped to fit properly. Low opening helps prevent constriction. Adjustable understraps and waistband. Washable. *State medium or large size pouch.* Shpg. wt., 3 oz.

\$1.15 Each

S D 1400 ..... Each $1.15

Army-Navy Style

For firm, comfortable support. Adjustable understraps. Cotton sack is bound with braid for longer wear. Washable. *State medium or large size pouch.* Shpg. wt., 3 oz.

47c Knitted

S D 1473—Knitted Sack Each 47c
S D 1474—Mesh Sack 47c

Single Strap Style

Fits without understraps. Pouch has soft cotton edges. Adjustable waistband. Firm, comfortable support. Washable. *State medium or large size pouch.* Shpg. wt., 2 oz.

37c Cotton

S D 1479—Cotton ... 37c
S D 1479—Rayon and Cotton 57c

Terms and bolts on both these pages may be ordered on Easy Payment Terms. See Inside Back Cover for full details

The next two pages are pages 790-791 of Sears' 1946-1947 catalog, describing and illustrating trusses sold by Sears over a year prior to Harad's entry into the truss field. Attention of the court is directed to the following:

1. Sears' registered trade mark, SEARS APPROVED.

2. Pen and ink sketches of men at work (carrying crate) and play (golfer).

3. The illustrative cuts of the trusses in oblique loop arrangement and the truss pads.

4. The slogan "RUPTURED! YOU CAN STILL LEAD AN ACTIVE LIFE."

5. The slogan: "WEAR A SEARS APPROVED TRUSS, PERFECT FITTING FOR YOUR COMFORT—NOW YOU CAN WORK OR PLAY WITH GREATER FREEDOM."

6. The anatomical drawings.

37

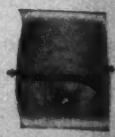
Defendant's Exhibit 21

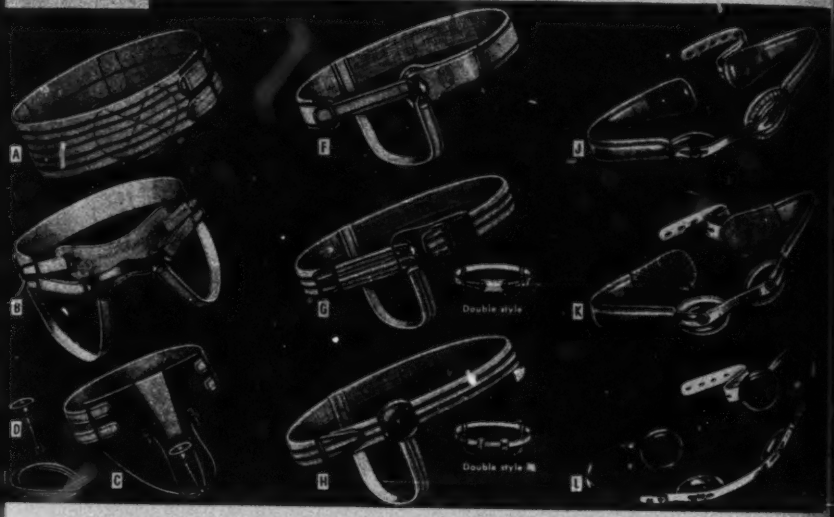
Ruptured? You can still lead an active life

SEARS Approved — THE RIGHT WAY TO SAY DRUGS AND SUNDRIES

HOW TO MEASURE FOR TRUSSES. You'll find it easy to get a perfect-fitting truss from Sears if you follow these instructions carefully, to insure accurate measurements. Stand relaxed. Have someone draw tape measure straight around body in direct line with point of rupture, as shown at right. Take measurement over your bare skin—do not measure over your clothes. Take snug measurement. Send us this exact measurement and we will send your correct size. (Please do not send waist measurement.)

NOTE: If you need a larger size truss than those listed, order the style you want at price shown, and we will get it for you at no extra charge. Allow up to 60 days for delivery of special sizes of trusses.





Umbilical Truss for adults

...his adjustable, long wearing truss ...ves secure support for navel ruptures. ...sponge rubber pad helps restrict rup- ... Pressure is comfortable, constant. ...tic band permits free movement of body. Wash- ...easy to keep clean. Even sizes 34 to 44. Take ...measurement around body at navel. *Please state measurement.* Shipping weight 1 pound 4 ounces.

...314.....Each $4.39

$4.29 Each

...stic spring lever adjustable Truss

...rm support for low rupture. Lined ...kle leather front. Lever spring ...s front for adjustment to body ...ment. Wide elastic body band ...adjustable end straps. Full-size leather covered ...n pad; plastic dummy pad on unaffected side. ...sizes 30 to 42. See "How to Measure" at top of ... *State exact measurement and right or left side.*

...813—Shpg. wt. 1 lb. 4 oz. Single style.....$4.89

$4.89 Single

...rine Support for "fallen womb"

...ghtweight leather, cotton lined; ...astic insert. Adjustable side straps, ...r understrap. Hard rubber pes- ...gives firm support. Even sizes ...44. Measure around fullest part of abdomen ...waist). *Please state exact measurement.*

...40—Shpg. wt. 13 oz.....Complete $3.39

$3.39 Complete

...ssery only.

...8 G 1474
...wt. 2 oz. Ea. 69c

Understraps.

8 G 2323
Shpg. wt. 2 oz. . Pr. 14c

...SEARS, ROEBUCK AND CO. ALL

Elastic style Trusses

Elastic style trusses give you light pressure and comfortable support in less severe cases of high or intermediate type rupture. Comfortable for wearing in bed to retain hernia while sleeping. All-elastic webbing is washable, easy to keep sanitary. Metal parts are heavily nickel-plated, highly polished. See "How to Measure" at top of page.

GOOD . . . New York style. Leather covered pad is reversible—may be worn on either right or left side. Strong elastic webbing. Even sizes 30 to 42. *State exact measurement.* See "How to Measure" at top of page. Shipping weight 8 ounces.
8 G 1310—Single style.....$1.69

$1.69 Single

BETTER . . . Boston style. Two front straps permit you to adjust the sweat-resisting leather-covered pad. Heavy elastic webbing is strong and durable. Even sizes 32 to 42. *State exact measurement.* See "How to Measure" above. Shipping weights 11 ounces, 15 ounces.
8 G 1308—Single. Fits right or left side.....$2.99
8 G 1309—Double style.....3.99

$2.59 Single

BEST . . . "Air cushion" style. Soft corrugated rubber on surface of "Air cushion" pad to fit firmly and give you extra comfort. Webbing is heavy, close-woven elastic with smooth surface on both sides. Even sizes 32 to 42. *State exact measurement.* See "How to Measure" above. Shpg. wts. 8 oz., 12 oz.
8 G 1305—Single. Fits right or left side.....$3.48
8 G 1304—Double style.....4.48

$3.48 Single

Hood style Trusses

Get Hood style for comfort and firm support in bil... Intermediate or low type ruptures. Tough ... springs. Rigid front; opening in back. Pads adj... to any angle, lock firmly. Exposed metal parts nick... plated, polished. Single style has dummy pad on ... affected side. See "How to Measure" above. *... exact measurement and whether for right or left side.*

GOOD . . . Standard model. Pads and steel springs covered with good quality leather. Even sizes 32 to 42. *State exact measurement and right or left side.* See "How to Measure" above.
8 G 1348—Single style. Shpg. wt. 1 lb. 2 oz.....$5.
8 G 1349—Double style. Shpg. wt. 1 lb. 4 oz.....

$5.[illegible] Each

BETTER . . . "Anti-slip" model. Pads are covered with corrugated rubber to hold firmly on the body. Steel springs covered with fine quality sweat-resistant leather. Even sizes 32 to 42. *State exact measurement and whether for right or left side.* See "How to Measure" above.
8 G 1391—Single style. Shpg. wt. 1 lb. 2 oz.....$7.
8 G 1392—Double style. Shpg. wt. . 1 lb. 4 oz.....

$7.[illegible] Each

BEST . . . Plastic style. You'll find this truss especially easy to keep clean and sanitary. Pads and springs covered with smooth, black, light weight plastic. Won't absorb odors. Fastens with sturdy leather strap. Comes in even sizes 30 to 4... *State exact measurement and right or left side.*
8 G 1315—Single style. Shpg. wt. 1 lb. 1 oz.....$7.
8 G 1316—Double style. Shpg. wt. 1 lb. 3 oz.....

$7.[illegible] Each

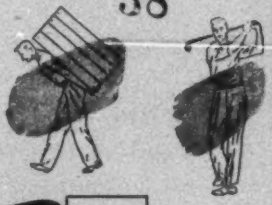
Sears FINE quality trusses are available on Easy Payment Terms. For details see inside back cover

Defendant's Exhibit 21

38

Wear a Sears Approved Truss, perfect fitting for your comfort

Now you can work or play with greater freedom . . . at Sears it's easy to get your correct size



Scrotal style Trusses

Scrotal style trusses to support low ruptures firmly and comfortably. Equipped with understraps to hold pad in position effectively. Exposed metal parts are heavily nickel plated and highly polished. In measuring for your truss, see "How to Measure" on opposite page. Always shop at Sears for high value at low cost.

GOOD . . . Elastic scrotal style. For mild cases of rupture. Waistband made of washable all-elastic webbing. Cloth understrap. Two tension straps at front control both position and pressure. Full-size leather-covered scrotal pad. Even sizes 32 to 42. *State exact measurement and right or left side.*
8 G 1312—Single style. Shpg. wt. 12 oz. ..... $4.89 Single

BETTER . . . Scrotal style spring Truss. Designed to hold hernia in place properly and comfortably. Pad leather-covered. Adjustable steel spring covered with sweat-resistant leather. Even sizes 32 to 42. *State exact measurement and right or left side.* Washable cloth understrap. Shipping weight 1 pound 3 ounces.
8 G 1340—Single style ..... $5.89 Single

BEST . . . Scrotal style spring Truss with "anti-slip pad." For firm support and extra comfort in this high quality truss. Gives readily with body movement. Adjustable pad covered with sponge rubber to grip body better. Well-padded spring covered with strong sweat-resistant leather. Soft rubber understraps. Even sizes 32 to 42. *State exact measurement and whether right or left side.*
8 G 1394—Single style. Shipping weight 1 lb. ..... $6.69 Single
8 G 1395—Double style. Shipping weight 1 lb. 12 oz. 8.69

French style adjustable Trusses . . . our most popular style

Rely on French style trusses to restrict high or intermediate ruptures. Pad adjusts to many positions to suit your individual needs. Gives firm pressure without discomfort. Holds in place without the aid of understraps. Pad is readily adjustable. High quality steel springs covered with leather. All exposed metal parts are heavily nickel plated and highly polished. In measuring for your truss, see "How to Measure" on opposite page. *Please state exact measurement and whether for right or left side.*

GOOD . . . standard model

Excellent value at a low price! Pad covered with leather. Comes in even sizes 32 to 44. Shipping weight 15 ounces.
8 G 1362—Single style ..... $3.89 Single

BETTER . . . "Grip-Tite" model

Special fixture makes corrugated rubber pad easily adjustable. Leather-covered, padded steel springs. Even sizes 32 to 46. Shipping weights 1 lb., 1 lb. 4 oz.
8 G 1385—Single style ..... $4.49 Single
8 G 1386—Double style 5.98

BEST . . . adjustable pressure

For maximum comfort and perfect fit use Sears best French style truss. So easy to adjust that one simple motion regulates amount of pressure on the pad from very firm to mild—even while you're wearing truss (see small view above). Corrugated rubber pad holds fast, won't slip. Gives firm pressure and support. Back pads are padded for extra comfort. Long-wearing, padded, steel springs covered with high-quality, strong, sweat-resistant leather. Get this truss for real satisfaction. Even sizes 32 to 42. *State exact measurement.* See "How to Measure" on opposite page. Shpg. wt. 1 lb. 1 oz.
8 G 1389 ..... $9.49 Single

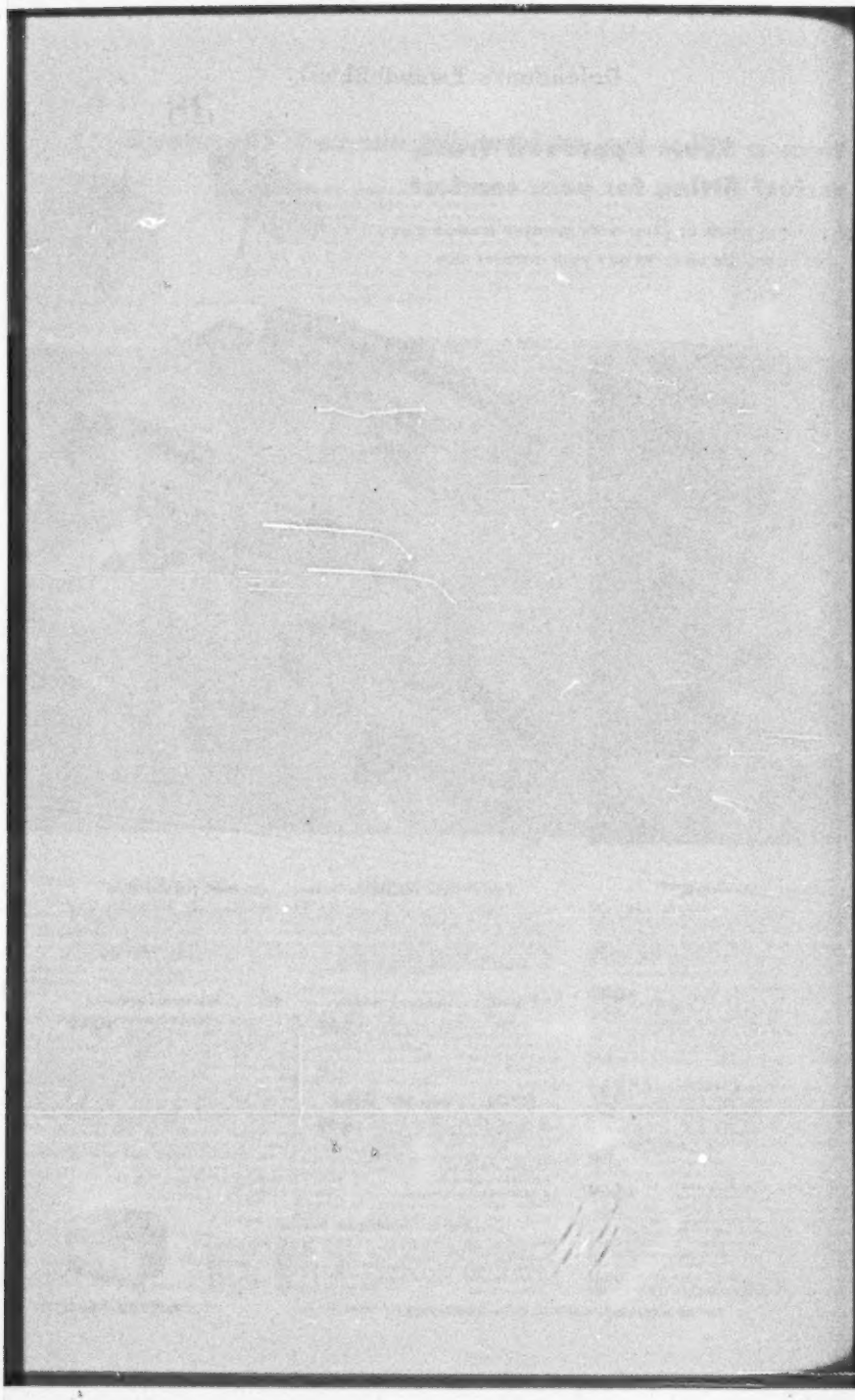
Elastic Webbing for trusses

For trusses and artificial limbs. Good quality cotton woven over strands of heavy rubber for extra service. *Measure webbing once owned, order same width.*

Width Inch	Catalog Number	Shpg. Wt.	Price Per Yard
⅞	8 G 1300	2 oz.	33c
1½	8 G 1301	3 oz.	53c
2	8 G 1303	4 oz.	79c

For other invalid supplies write for our Sickroom Catalog 589G

ALSO PAGE 791 . . TRUSSES



The next two pages are pages 682-683 of Sears' 1947-48 catalog, describing and illustrating trusses sold by Sears prior to the sale of any truss by Harad. Attention of the court is directed to the following:

1. The illustrative cuts of trusses in oblique loop arrangement, and of the truss pads.

2. The slogan: "RUPTURED! YOU CAN STILL LEAD AN ACTIVE LIFE."—"WEAR A SEARS APPROVED TRUSS, PERFECT FITTING FOR YOUR COMFORT—NOW YOU CAN WORK OR PLAY WITH GREATER COMFORT."

3. Sears' registered trade mark, SEARS APPROVED.

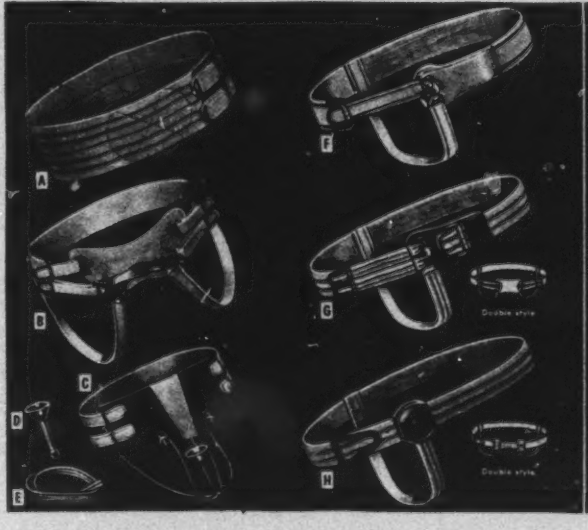
4. Pen and ink sketches showing men in various physical activities (shoveler, shower bathing, etc.).

5. The anatomical drawings.

Ruptured? You can still lead an active life

HOW TO MEASURE FOR TRUSSES: You'll find it easy to get a perfect-fitting truss from Sears if you follow these instructions carefully to insure accurate measurements. Stand relaxed. Have someone draw tape measure straight around body in direct line with point of rupture, as shown at right. Take measurement over your bare skin—do not measure over your clothes. Take snug measurement. Send us this exact measurement and we will send your correct size. (Please do not send waist measurement.)

NOTE: If you need a larger size truss than those listed, order the style you want at price shown, and we will get it for you at no extra charge. Allow up to 60 days for delivery of special sizes of trusses.



Umbilical Truss for adults

A This adjustable, long wearing truss gives secure support for navel ruptures. Soft sponge rubber pad helps restrict rupture. Pressure is comfortable, constant. Elastic band permits free movement of body. Washable, easy to keep clean. Even sizes 24 to 44. Take snug measurement around body at navel. *Please state exact measurement.* — $4.29 Each

8 K 1514—Shpg. wt. 1 lb. 4 oz. ..... Each $4.29

Elastic spring lever adjustable Truss

B Firm support for low rupture. Lined wide leather front. Lever spring across front for adjustment to body movement. Wide elastic body band with adjustable end straps. Full-size leather covered hernia pad; plastic dummy pad on unaffected side. Even sizes 30 to 42. See "How to Measure" at top of page. *State exact measurement and right or left side.* — $4.89 Single

8 K 1313—Shpg. wt. 1 lb. 4 oz. Single style $4.89

Uterine Support for "fallen womb"

C Lightweight leather, cotton lined; elastic insert. Adjustable side straps, rubber understraps. Hard rubber pessary gives firm support. Even sizes 32 to 44. Measure around fullest part of abdomen (not waist). *Please state exact measurement.* — $3.39 Complete

8 K 1440—Shpg. wt. 13 oz. ..... Complete $3.39

B **Pessary only.** 8 K 1474 — Shpg. wt. 2 oz. 69c

G **Understrap.** 8 K 1461 — Shpg. wt. 2 oz. 19c

Elastic style Trusses

Elastic style trusses give you light pressure and comfortable support in less severe cases of high or intermediate type rupture. Comfortable for wearing in bed to retain hernia while sleeping. All-elastic webbing is washable, easy to keep sanitary. Metal parts are heavily nickel-plated, highly polished. See "How to Measure" at top of page.

F **GOOD . . . New York style.** Leather covered pad is reversible—may be worn on either right or left side. Strong elastic webbing. Even sizes 30 to 42. *State exact measurement.* See "How to Measure" at top of page. Shipping weight 8 ounces. — $1.69 Single

8 K 1310—Single style $1.69

G **BETTER . . . Boston style.** Two front straps permit you to adjust the sweat-resisting leather-covered pad. Heavy elastic webbing is strong and durable. Even sizes 32 to 42. *Please state exact measurement.* See "How to Measure" above. Shipping weights 11 ounces, 15 ounces. — $2.59 Single

8 K 1308—Single. Fits right or left side $2.59
8 K 1309—Double style 3.59

H **BEST . . . "Air cushion" style.** Soft corrugated rubber on surface of "Air cushion" pad to fit firmly and give you extra comfort. Webbing in heavy, close-woven elastic with smooth surface on both sides. Even sizes 32 to 42. *State exact measurement.* See "How to Measure" above. Shpg. wts. 8 oz., 12 oz — $3.49 Single

8 K 1303—Single. Fits right or left side $3.49
8 K 1304—Double style 4.49

French style adjustable Truss

Rely on French style trusses to restrict hig[h] mediate ruptures. Pad adjustable to suit [in]dual needs; Gives firm pressure without [di]Holds in place without the aid of understa[p] quality steel springs covered with leather[,] pound metal parts heavily nickel plated [a]polished. See "How to Measure" above.

J **GOOD . . . Standard model.** Excellent value at a low price! Pad covered with leather. Comes in even sizes 32 to 44. *Please state exact measurement and whether for right or left side.* Shipping weight 15 o[z]

8 K 1343—Single style .....

K **BETTER . . . "Skip-Tite" model.** Special fixture makes anti-slip rubber pad easily adjustable. Leather-covered, pa[d]ded steel springs. Even sizes 32 to 44. *State exact measurement and whether for ri[g]ht side.* Shipping weights 1 pound, 1 pound 4[.]

8 K 1305—Single style .....
8 K 1306—Double style .....

L **BEST . . . adjustable pressure model.** For maximum comfort and perfect fit. One simple motion regulates amount of pressure on pad from very firm to mild—even while you're wearing truss (see [a]above). Anti-slip rubber pad holds fast, [e]back pad. Steel springs covered with le[a]sweat-resistant leather. Even sizes 32 to [4]*exact measurement and whether for right or l[e]*

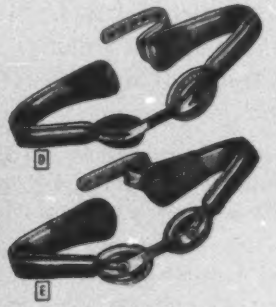
8 K 1300—Shipping weight 1 lb. 1 oz. .....

Above fine quality trusses are available on Easy Payment Terms. For details see inside back cover

Wear a Sears Approved Truss, perfect fitting for your comfort

Now you can work or play with greater freedom . . .

It's easy to get your correct size at Sears



Scrotal style Trusses

...crotal style trusses to support low ruptures firmly and ...rtably. Equipped with understraps to hold pad in posi...tively. Exposed metal parts are heavily nickel plated ...style polished. In measuring for your truss, see "How to ...re" on ...osite page. Always shop at Sears for high ...at lo...

...Elastic scrotal style. For mild cases ...rupture. Waistband made of washable all-... webbing. Cloth understrap. Two tension ...at front control both position and pressure ...-size leather-covered scrotal pad. Even sizes 32 to 42. *...act measurement and right or left side.*

...12—Single style. Shpg. wt. 12 oz. $4.89

$4.89 Single

...Scrotal style spring Truss. Designed ...hold hernia in place properly and comfortably. ...leather-covered pad. Adjustable steel spring ...ed with sweat-resistant leather. Washable ...derstrap. Even sizes 32 to 42. *State exact measurement ...ght or left side.* Shipping weight 1 pound 3 ounces.

...41—Single style. $5.89

$5.89 Single

...Scrotal style spring Truss with "Anti-... pad." For firm support and extra comfort ...high quality truss. Given readily with body ...st. Adjustable pad covered with corrugated ...t to grip body better. Well-padded spring covered with ...sweat-resistant leather. Soft rubber understraps. Even ...32 to 42. *State exact measurements and whether for right ...side.*

...4—Single style. Shipping weight 1 lb. $6.69

...5—Double style. Shipping weight 1 lb. 12 oz. 8.69

$6.69 Single

Hood style Trusses . . . our most popular style

Get our Hood style truss for comfort and firm support in high, intermediate or low type ruptures. Well constructed with resilient steel springs. Front of truss is rigid with opening in back. Pads adjust to any angle to suit your individual needs . . . lock firmly. All exposed metal parts are nickel plated and highly polished to resist rust. Single style has a dummy pad on unaffected side. *State exact measurement and whether for right or left side.* Be sure to read instructions on "How to Measure" on opposite page.

GOOD . . Standard model

D Pads and steel springs covered with good quality leather. Adjustable pads. Even sizes 32 to 42. *State exact measurement and whether for right or left side.*

8 K 1346—Single style. Shpg. wt. 1 lb. 2 oz. ~~Price in Spring Catalog was $5.98~~ ..... ~~$5.69~~

8 K 1349—Double style. Shpg. wt. 1 lb. 4 oz. ~~Price in Spring Catalog was $6.98~~ ..... ~~$6.69~~

$5.69 Single

BETTER . . "Anti-slip" model

E Pads are covered with corrugated non-slip rubber to hold firmly on body. Steel springs covered with fine quality sweat-resistant leather. Sizes 32 to 42. *State exact measurement right or left side.*

8 K 1391—Single style. Shpg. wt. 1 lb. 2 oz. $7.79

8 K 1392—Double style. Shpg. wt. 1 lb. 4 oz. 8.98

$7.79 Single

BEST . . . Plastic style

F You'll find this truss especially easy to keep clean and sanitary . . . just wipe with a wet cloth when you want to clean it!

Pads and springs are covered with smooth light weight plastic. Won't absorb odors. May be worn while bathing or swimming. Fastens with sturdy leather strap. An excellent truss for year-round use! For value always shop at Sears. Sizes 30 to 42. *State exact measurement and whether for right or left side.*

8 K 1315—Single style.
Shipping weight 1 lb. 1 oz. $7.98

8 K 1316—Double style.
Shipping weight 1 lb. 3 oz. 8.98

$7.98 Single

Elastic Webbing for trusses

For trusses and artificial limbs. Good quality cotton woven over strands of heavy rubber for extra service. *Measure webbing now used, order same width.*

Width Inch	Catalog Number	Shpg. Wt.	Price Yard
½	8 K 1300	2 oz.	39c
1½	8 K 1301	3 oz.	59c
2	8 K 1302	4 oz.	69c

Comfortable, Adjustable Suspensories

Single Strap Style. Quality at a low price! Fits without understraps. Knit cotton pouch has elastic edges. Adjustable waistband of cotton webbing. Washable. *State whether medium or large size pouch is wanted.*

8K1476—Shpg. wt. 3 oz. 37c

Army-Navy Style. For firm, comfortable support. Pouch made of long-wearing cotton mesh bound in braid. Adjustable elastic understrap and waistband. Washable. *State whether medium or large size pouch is wanted.*

8K1476—Shpg. wt. 3 oz. 67c

Sears Approved. Our de luxe model. Self-adjusting. Seamless rayon pouch shaped to fit properly... Low opening. Adjustable elastic understraps and waistband. Washable. *State whether medium or large size pouch is wanted.*

8 K 1480—Shpg. wt. 6 oz. $1.15

The next two pages are pages 580-581 of Sears' 1948 Spring and Summer catalog describing and illustrating trusses sold by Sears, including for the first time the truss supplied by Harad. Attention of the court is directed to the following:

1. The pen and ink sketch of the man shoveling is the sketch used by Sears in its previous 1947-48 catalog as shown in Defendant's Exhibit 20.

2. The pen and ink sketch of the golfer is the sketch used by Sears in its previous 1946-47 catalog as shown in Defendant's Exhibit 21.

3. A comparison of the cut illustrating the truss supplied by Harad with the other cuts illustrating the other SEARS APPROVED trusses with reference to similarity of presentation in oblique loop arrangement.

4. All trusses, including Harad's, are identified only as SEARS APPROVED trusses.

5. The slogans, ACTIVE LIFE and ACTIVE MAN are used in connection with all SEARS APPROVED trusses, and were used in previous Sears catalogs heretofore shown in this Appendix.

6. The registered trade mark, SEARS APPROVED, specifically identifies the truss supplied by Harad.

Defendant's Exhibit 30

Ruptured? You can still lead an active life

Suspensories

A Single Strap Style. Quality at a low price! Fits without understraps. Knit cotton pouch has elastic edge. Adjustable waistband of cotton webbing. Washable. *State whether medium or large size pouch is wanted.*
8 L 1478—Shpg. wt. 2 oz. **47c**

B Army-Navy Style. For firm, comfortable support. Pouch made of long-wearing cotton mesh bound in braid. Adjustable elastic understraps and waistband. Washable. *State whether medium or large size pouch is wanted.*
8 L 1476—Shpg. wt. 3 oz. **79c**

C Sears Approved. Our deluxe model. Self-adjusting. Seamless rayon pouch shaped to fit properly. Low opening. Adjustable elastic understraps and waistband. Washable. *State whether medium or large size pouch is wanted.*
8 L 1480—Shpg. wt. 5 oz. **$1.15**

If you do not at present wear a truss, we suggest you see your family doctor on the style of truss to buy.

French style Trusses

For restricting high or intermediate ruptures. Pad adjustable to suit your individual needs. Hold in place without aid of understraps. High quality steel springs covered with leather.

D GOOD . . . Standard Model. Excellent value! Pad covered with leather. Even sizes 32 to 44. *Please state exact measurement and whether for right or left side.* Shpg. wt. 15 oz. **$3.89** Each
8 L 1342—Single style $3.89

E BETTER . . . "Grip-Tite" model. Special fixture makes anti-slip rubber pad easily adjustable. Leather-covered, padded steel springs. Even sizes 32 to 44. *State exact measurement and whether for right or left side.* **$4.49** Single
8 L 1385—Single. Shpg. wt. 1 lb. . . . $4.49
8 L 1386—Double. Shpg. wt. 1 lb. 6 oz. 5.98

F BEST . . . adjustable pressure model. For maximum comfort and perfect fit. One simple motion regulates amount of pressure on pad from very firm to mild—even while you're wearing truss (see small view above). Anti-slip rubber pad holds fast, won't slip. Leather back pad padded for extra comfort. Steel springs covered with sweat-resistant leather. Even sizes 32 to 42. *State exact measurement and whether for right or left side.* **$9.69** Each
8 L 1388—Shpg. wt. 1 lb. 1 oz. $9.69

Elastic style Trusses

Give light pressure and comfortable support in less severe cases of high or intermediate type rupture. Comfortable for wearing in bed. All-elastic webbing is washable, easy to keep sanitary.

G GOOD . . . New York style. Leather covered pad is reversible—may be worn on either right or left side. Strong elastic webbing. Even sizes 30 to 42. *State exact measurement.* Shpg. wt. 8 oz. **$1.69** Each
8 L 1310—Single style $1.69

H BETTER . . . Boston style. Two front straps permit you to adjust the sweat-resisting leather-covered pad. Heavy elastic webbing. Even sizes 32 to 42. *Please state exact measurement.* Shipping weights 11 ounces; and 15 ounces. **$2.59** Single
8 L 1308—Single. Fits right or left side. $2.59
8 L 1309—Double style 3.59

J BEST . . . "Air cushion" style. Soft corrugated rubber on surface of "Air cushion" pad to fit firmly and give you extra comfort. Webbing is heavy, close-woven elastic with smooth surface on both sides. Comes in even sizes 32 to 42. *Please state exact measurement.* See "How to Measure" on opposite page. Shipping weights 8 ounces; and 12 ounces. **$3.49** Single
8 L 1303—Single. Fits right or left side. $3.49
8 L 1304—Double style 4.49

Umbilical Tru

K Given secure support for navel ruptures. Soft sponge rubber pad. Elastic band permits free movement of body. Washable. Even Take away measurement navel. *Please state exact* 8 L 1314—Shpg. wt. 1 lb. 6 oz.

Spring Lever Tr

L Firm support for low ru ture. Wide elastic bod band with adjustable cu straps. Wide leather lini front. Lever spring across justment to body movement leather covered hernia pad; p my pad on unaffected side. 30 to 42. *State exact measu whether for right or left side.* Sh 8 L 1313—Shpg. wt. 1 lb. 4 oz.

Uterine Suppo

M Lightweight leather, ot ton lined; elastic insert Adjustable side straps, rub ber understraps. Hard rub ber pessary. Even sizes 32 to ure around fullest part of abd waist). *State exact measure* 8 L 1460—Shpg. wt. 13 oz. Cou

Understraps — Pessa

N 8 L 1461-Shipping wt. 3 oz. . . . Pair **21c** — **O** 8 L 3 oz.

High Quality Elastic Bandages

R Tetra Rubberloss Elastic Bandage. 75c 2-inch width
Elasticity derived from special weave of cotton threads. Retains even tension. For surface varicose veins, dislocations and sprains. Length when stretched about 15 feet. Cream color.

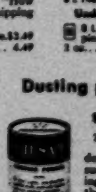
Width	Cat. No.	Shpg. wt.	Each
2 in.	8 L 1444	2 oz.	75c
3 in.	8 L 1445	3 oz.	90c
4 in.	8 L 1449	4 oz.	$1.20

S Tenser Elastic Bandage. 90c 2-inch width
Made with rubber. Combines tension and flexibility with light weight. Designed to treat varicose veins, dislocations, swellings. About 16 feet when stretched. Washable. Beige color. Postpaid. (Shpg. wt. 4 oz.)

Width	Cat. No.	Each
2 inches	8 L 1402	90c
3 inches	8 L 1404	$1.20
4 inches	8 L 1407	1.50

580 . . SEARS-ROEBUCK 414

Dusting powder for Tr



$1.18 No matter h ly your truss fi 2 ounces feel better if yo high-quality dus der. Made especially surgical appliances. Soo ing cushion between it the body . . . non-chafe to comfort for every m a truss. Shpg. wt. 7 oz.
8 L 1399—Two (3-oz.) can

Buy on Sears Easy Paym
See inside back cover f

Wear a perfect-fitting Sears Approved Truss

Scrotal Type Trusses

...tal style trusses to support low ruptures ...d comfortably. Equipped with understraps ... pad in position effectively. Exposed metal ...r handy nickel plated and highly polished. ...ring, see "How to Measure" below.

... Elastic Scrotal style. For ... cases of rupture. Elastic web- ...ehind. Cloth understrap. Two ... straps at front control position ...sure of leather-covered scrotal pad. Even ... to 42. *State exact measurement and whether ... or left side.* Shipping weight 12 ounces. ...Single style. ..... $4.89 Each

... Scrotal style spring ... Designed to hold hernia in ...roperly and comfortably. Soft ...overed pad. Adjustable steel ...overed with sweat-resistant leather. Wash- ...h understrap. Even sizes 32 to 42. *State ...rement and whether for right or left side.* ...Single style. Shpg. wt. 1 lb. 3 oz. ... $5.98 $5.98 Each

... Scrotal style spring Truss "Anti-slip pad." For firm support plus extra comfort get this high ...tron. Given readily with body ...t. Adjustable pad covered with corrugated ...r to grip body better. Well-padded spring ...with strong sweat-resistant leather. Soft ...understraps. Even sizes 32 to 42. *State ...rement and whether for right or left side.* ...Single style. ...weight 1 pound. ..... $6.89 ...Double style. ...weight 1 pound 12 ounces. ..... 8.69 $6.69 Single

Hood style Trusses

Get our Hood style truss for comfort and firm support in high, intermediate, or low type ruptures. Well constructed with resilient steel springs. Rigid front with back opening. Pads adjust to any angle. Single style has dummy pad on unaffected side.

B GOOD ... Standard model. Pads and steel springs covered with good quality leather. Adjustable pads. Even sizes 32 to 42. *State exact measurement and whether for right or left side.*
8 L 1348—Single style. Shpg. wt. 1 lb. 2 oz. ... $5.69
8 L 1349—Double style. Shpg. wt. 1 lb. 4 oz. ... 6.69 $5.69 Single

C BETTER ... "Anti-slip" model. Pads are covered with corrugated non-slip rubber to hold firmly on body. Steel springs covered with fine quality sweat-resistant leather. Sizes 32 to 42. *Please state exact measurement and whether for right or left side.*
8 L 1391—Single style. Shpg. wt. 1 lb. 2 oz. ... $7.79
8 L 1392—Double style. Shpg. wt. 1 lb. 4 oz. ... 8.98 $7.79 Single

D BEST ... Plastic style. You'll find this truss especially easy to keep clean and sanitary ... just wipe with a wet cloth when you want to clean it!
Pads and springs are covered with smooth, lightweight plastic. Won't absorb odors. May be worn while bathing or swimming. Fastens with sturdy leather strap. An excellent truss for year-round use! Comes in sizes 30 to 42. *Please state exact measurement and whether for right or left side.*
8 L 1315—Single style.
Shipping weight 1 pound 1 ounce $7.98
8 L 1316—Double style.
Shipping weight 1 pound 3 ounces ..... 8.98 $7.98 Single

For the active man! New scientifically designed Athletic Truss and Support

This new Sears Approved athletic truss and support is designed to hold your hernia when you're doing heavy work or engaged in athletics. Excellent after operations to support tissues and aid in preventing recurrences of hernia. Made to support structures instead of pressing deeply at one point. Has strong elastic belt and understraps with pliable rubber front. Genuine leather reinforcement at buckle. Used as truss, rubber pad fits in any one of 3 positions. Used as a support, rubber front offers you comfort as well as protection to abdominal region.

$8.49 Single

For the man who works hard and likes athletics, this Sears Approved athletic truss is ideal support. Excellent when you drive a car, stretch, squat, or bend over. Conforms to natural anatomy of body. Even sizes 30 to 42. *State exact measurement and whether for right or left side.*
8 L 1325—Single style. Shpg. wt. 1 lb. 10 oz. ... $8.49
8 L 1326—Double style. Shpg. wt. 1 lb. 14 oz. ... 9.49

Elastic Webbing for trusses

Use this elastic webbing for trusses and artificial limbs. Made of good quality cotton woven over strands of heavy rubber for extra service. *Measure the webbing now and, order same width.* Buy Sears trusses for high quality at a low price.

Width Inches	Catalog Number	Shipping Weight	Price Yard
½	8 L 1300	2 oz.	25c
1	8 L 1301	3 oz.	39c
1½	8 L 1302	4 oz.	54c
2	8 L 1303	4 oz.	69c

HOW TO MEASURE FOR TRUSSES. You'll find it easy to get a perfect-fitting truss from Sears if you follow these instructions carefully to insure accurate measurements. Stand relaxed. Have someone draw tape measure straight around body in direct line with point of rupture, as shown at left. Take measurement over your bare skin—do not measure over your clothes. Take snug measurement. Send us this exact measurement and we will send your correct size. (Please do not send waist measurement.)

NOTE: If you need a larger size truss than those listed, order the style you want at price shown, and we will get it for you at no extra charge. Allow up to 60 days for delivery of special sizes of trusses.

Sears Trusses may be purchased on Easy Payment Terms. For complete details, see inside back cover

The next 2 pages are pages 1005A and 1005B of Sears' 1948 Fall and Winter catalog describing and illustrating trusses sold by Sears, including the truss supplied by Harad. Attention of the court is directed to the following:

1. The pen and ink sketch of the man shoveling is the same sketch used by Sears in advertising trusses other than the one supplied by Harad (e.g., Deft's. Ex. 20.

2. A comparison of the cut illustrating the truss supplied by Harad with the cuts illustrating other SEARS APPROVED trusses with reference to similarity of presentation in oblique loop arrangement.

3. All trusses, including the truss supplied by Harad, are identified only by the Sears registered trade mark, SEARS APPROVED.

4. The slogans, ACTIVE LIFE and ACTIVE MAN, are used in connection with all SEARS APPROVED trusses, and were used in previous Sears catalogs heretofore shown in this Appendix.

5. The registered trade mark, SEARS APPROVED, specifically identifies the truss supplied by Harad.

Defendant's Exhibit 34

RUPTURED? YOU CAN STILL LEAD AN ACTIVE LIFE

Suspensories

Single Strap style. Fits without understrap. Knit cotton pouch. Adjustable waistband of cotton webbing. Washable. *State choice of medium or large size pouch.* Shpg. wts. each 2 oz.

D 1478—Each..... 49c
Two for..... 95c

Army-Navy style. For firm support. Pouch made of long-wearing cotton mesh bound in braid. Adjustable elastic understraps and waistband. Washable. *State choice of medium or large size pouch.* Shpg. wts. each 3 oz.

D 1476—Each..... 79c
Two for..... $1.49

Sears Approved. Seamless rayon pouch shaped to fit properly. Low opening. Adjustable elastic understraps and waistband. Washable. *State choice of medium or large size pouch.* Shpg. wts. each 3 oz.

D 1480—Each..... $1.15
Two for..... $2.19

If you do not at present wear a truss, we suggest you see your family doctor on the style of truss to buy.

French Style Trusses

For restricting high or intermediate ruptures. Pad adjustable to suit your individual needs. Hold in place without aid of understraps. High quality steel springs covered with leather.

GOOD . . . Standard model . . . Excellent value! Pad covered with leather. Even sizes 32 to 46. *Please state exact measurement and whether for right or left side.* Shpg. wt. 15 oz. — $3.89 Each

D 1342—Single style..... $3.89

BETTER . . . "Grip-Tite" model . . . Special fixture makes anti-slip rubber pad easily adjustable. Leather-covered, padded steel springs. Even sizes 32 to 46. *State exact measurement and whether for right or left side.* — $4.49 Each

D 1385—Single. Shpg. wt. 1 lb. . . . $4.49
D 1386—Double. Shpg. wt. 1 lb. 4 oz. 5.98

BEST . . . Adjustable Pressure model . . . For maximum comfort and perfect fit. One simple motion regulates amount of pressure on pad from very firm to mild—even while you're wearing truss (see small view above). Anti-slip rubber pad holds fast, won't slip. Leather back pad padded for extra comfort. Steel springs covered with sweat-resistant leather. Even sizes 32 to 42. *State exact measurement and whether for right or left side.* — $9.69 Each

D 1388—Shpg. wt. 1 lb. 1 oz. $9.69

Elastic Style Trusses

Give light pressure and comfortable support in less severe cases of high or intermediate type rupture. Comfortable for wearing in bed. All-elastic webbing is washable, easy to keep sanitary.

GOOD . . . New York style. Leather covered pad is reversible—may be worn on either right or left side. Strong elastic webbing. Even sizes 30 to 42. *State exact measurement.* Shpg. wt. 8 oz. — $1.69 Each

D 1310—Single style..... $1.69

BETTER . . . Boston style. Two front straps permit you to adjust the sweat-resisting leather-covered pad. Heavy elastic webbing. Even sizes 32 to 42. *Please state exact measurement.* Shpg. weights 11 ounces; and 15 ounces. — $2.59 Single

D 1308—Single. Fits right or left side. $2.39
D 1309—Double style..... 3.59

BEST . . . "Air cushion" style . . . Soft corrugated rubber on surface of "Air cushion" pad to fit firmly and give you extra comfort. Webbing is heavy, close-woven elastic with smooth surface on both sides. Comes in even sizes 32 to 42. *Please state exact measurement.* See "How to Measure" on opposite page. Shipping weights 8 ounces; and 12 ounces. — $3.49 Single

D 1302—Single. Fits right or left side. $3.49
D 1304—Double style..... 4.49

Umbilical Trus

Gives secure support to navel ruptures. Soft sponge rubber pad. Elastic band permits free movement of body. Washable. Even sizes 30 to 42. Take snug measurement around navel. *Please state exact measurement.* Shpg. wt. 1 lb. 4 oz.

D 1314—Shpg. wt. 1 lb. 4 oz. . . .

Spring Lever Trus

Firm support for low rupture. Wide elastic body band with adjustable end straps. Wide leather lined front. Lever spring across front for adjustment to body movement. Leather covered hernia pad; plain navy pad on unaffected side. Even sizes 30 to 42. *State exact measurement whether for right or left side.* Shpg. wt. 1 lb. 4 oz.

D 1313—Shpg. wt. 1 lb. 4 oz. . . .

Uterine Support

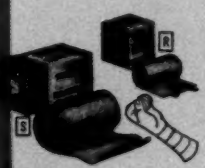
Lightweight leather, cotton lined; elastic insert. Adjustable side straps, rubber understraps. Hard rubber pessary. Even sizes 32 to 44 inches around fullest part of abdomen (not waist). *State exact measurement.* Shipping weight 13 ounces.

D 1440..... Complete

Understraps — Pessary

D 1441-Shipping wt. 2 oz.... Pair 21c — D 1442-Shipping wt. 3 oz.... Each 29c

ELASTIC BANDAGES of high quality



79c — Tetra Rubberloss Elastic Bandage. 3-inch width. Special weave of cotton threads gives elasticity. For surface varicose veins, dislocations and sprains. Retains even tension. Cream color. Length when stretched about 15 feet.

Catalog No.	Width	Shpg. wt. each	Each	Two for
D1444	2 in.	2 oz.	79c	$1.49
D1445	3 in.	3 oz.	99c	1.89
D1447	4 in.	4 oz.	$1.29	2.49

$1.00 — Tensor Elastic Bandage . . . Made with rubber. Combines tension and flexibility with light weight. Designed to treat varicose veins, dislocations, swellings. About 16 feet when stretched. Washable. Beige color. Postpaid. (Shpg. wt. 4 oz.)

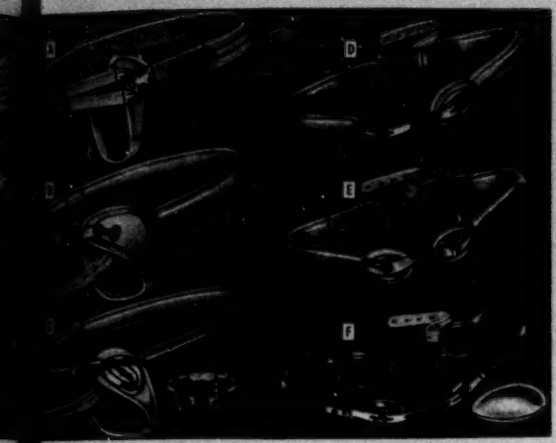
Width	Catalog No.	Each
2 inches	D 1402	$1.00
3 inches	D 1403	1.30
4 inches	D 1407	1.45

DUSTING POWDER for

$1.09 No matter how your truss fits, you feel better if you use high-quality Powder especially to use with ... ascus. Acts as a ... between truss and body ... sorbent. A real aid to ... wts. 4 oz.; 7 oz.

D 1399—2-oz. can..... $1.09
Two (2-oz.) cans.....

Buy on Sears Easy Payment Plan. See inside back cover for ...



WEAR A PERFECT-FITTING SEARS APPROVED TRUSS

Scrotal type Trusses

...total style trusses to support low ruptures ...ed comfortably. Equipped with understraps ...pad in position effectively. Exposed metal ...e heavily nickel plated and highly polished. ...uring, see "How to Measure" below.

...00 ... Elastic Scrotal style. For ... cases of rupture. Elastic web-...thband. Cloth understrap. Two ...straps at front control position ...sure of leather-covered scrotal pad. Even ...to 42. *State exact measurement and whether ...or left side.* Shipping weight 12 ounces. ...—Single style. ..... $4.89 Each

...TER ... Scrotal style spring ... Designed to hold hernia in ...roperly and comfortably. Soft ...covered pad. Adjustable steel ...covered with sweat-resistant leather. Wash-...th understrap. Even sizes 32 to 42. *State ...surement and whether for right or left side.* ...—Single style. Shpg. wt. 1 lb. 3 oz. .... $5.98 $5.98 Each

... Scrotal style spring Truss ... "anti-slip pad." For firm sup-...l extra comfort get this high ...truss. Given readily with body ...ent. Adjustable pad covered with corrugat-...er to grip body better. Well-padded spring ... with strong sweat-resistant leather. Soft ...understraps. Even sizes 32 to 42. *State ex-...surement and whether for right or left side.* ...—Single style. ...t weight 1 pound. ..... $6.69 ...—Double style. ...t weight 1 pound 12 ounces. ..... 8.69 $6.69 Single

Hood style Trusses

Get our Hood style truss for comfort and firm support in high, intermediate, or low type ruptures. Well constructed with resilient steel springs. Rigid front with back opening. Pads adjust to any angle. Single style has dummy pad on unaffected side.

GOOD ... Standard model. Pads and steel springs covered with good quality leather. Adjustable pads. Even sizes 32 to 42. *State exact measurement and whether for right or left side.* 8 D 1349—Single style. Shpg. wt. 1 lb. 2 oz. ... $3.89 8 D 1349—Double style. Shpg. wt. 1 lb. 4 oz. ... 6.49 $5.69 Single

BETTER ... "Anti-slip" model. Pads are covered with corrugated non-slip rubber to hold firmly on body. Steel springs covered with fine quality sweat-resistant leather. Sizes 32 to 42. *Please state exact measurement and whether for right or left side.* 8 D 1391—Single style. Shpg. wt. 1 lb. 2 oz. ... $7.79 8 D 1392—Double style. Shpg. wt. 1 lb. 4 oz. ... 8.98 $7.79 Single

BEST ... Plastic style. You'll find this truss especially easy to keep clean and sanitary ... just wipe with a wet cloth when you want to clean it! Pads and springs are covered with smooth, light-weight plastic. Won't absorb odors. May be worn while bathing or swimming. Fastens with sturdy leather strap. An excellent truss for year-round use! Comes in sizes 30 to 42. *Please state exact measurement and whether for right or left side.* 8 D 1315—Single style. Shipping weight 1 pound 1 ounce. ... $7.98 8 D 1316—Double style. Shipping weight 1 pound 3 ounces. ... 8.98 $7.98 Single

HOW TO MEASURE FOR TRUSSES. You'll find it easy to get a perfect-fitting truss from Sears if you follow these instructions carefully to insure accurate measurements. Stand relaxed. Have someone draw tape measure straight around body in direct line with point of rupture, as shown at left. Take measurement over your bare skin—do not measure over your clothes. Take snug measurement. Send us this exact measurement and we will send your correct size. (Please do not send waist measurement.)

NOTE: If you need a larger size truss than those listed, order the style you want at price shown, and we will get it for you at no extra charge. Allow up to 60 days for delivery of special sizes of trusses. Sorry no C.O.D. orders.

For the active man!

New scientifically designed

ATHLETIC TRUSS AND SUPPORT

This new Sears Approved athletic truss and support is designed to hold reducible hernia when you're doing heavy work or engaged in athletics. See your doctor! Excellent after operations to support tissues and aid in preventing recurrences of hernia. $8.89 Single

Made to support structures instead of pressing deeply at one point. Has strong elastic belt and understraps with pliable rubber front. Genuine leather reinforcement at buckle. Used as truss, rubber pad fits in any one of 3 positions. Used as a support, rubber front offers you comfort as well as protection to abdominal region.

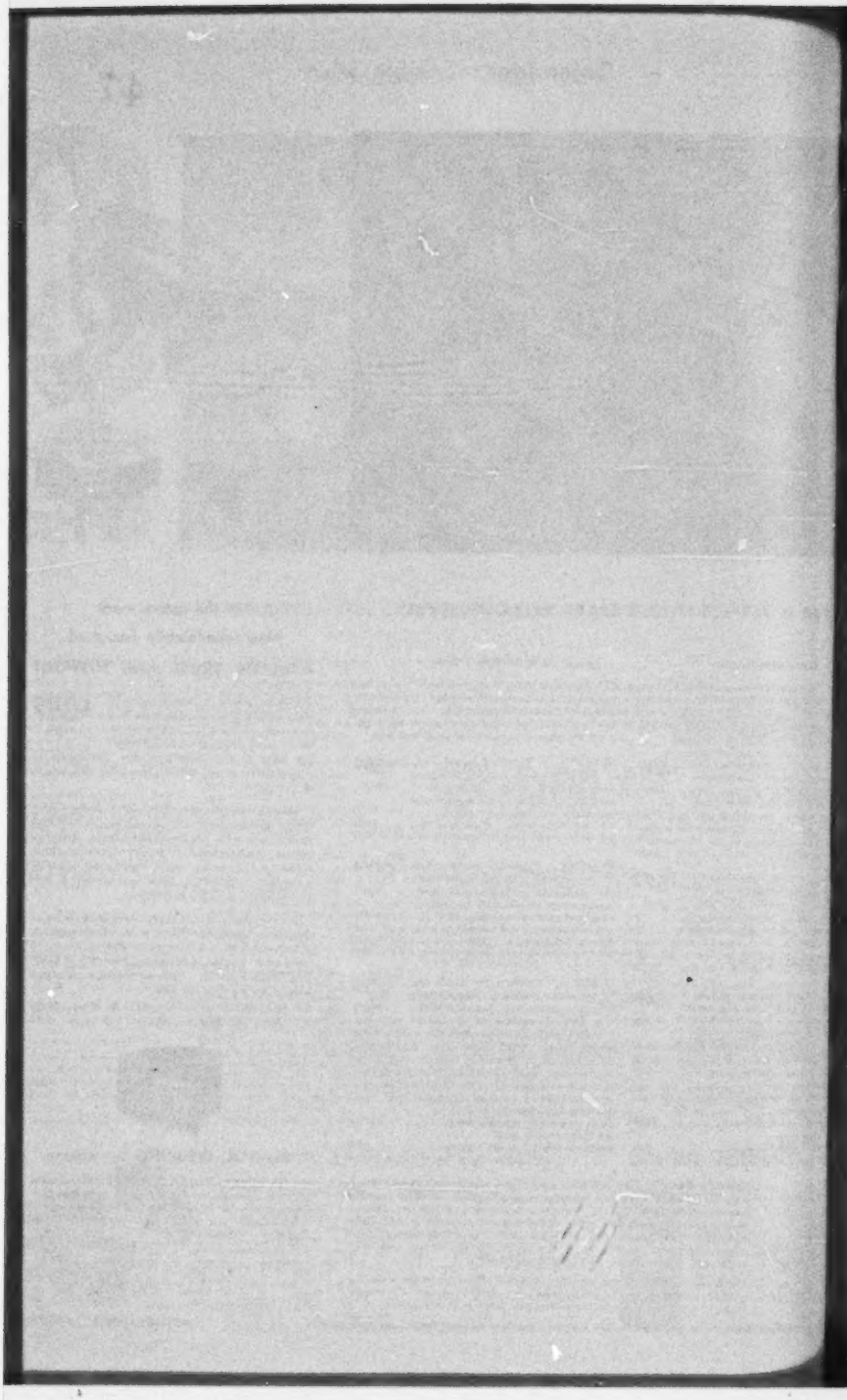
For the man who works hard and likes athletics, this Sears Approved athletic truss is ideal support. Excellent when you drive a car, stretch, squat, or bend over. Conforms to natural anatomy of body. Even sizes 30 to 42. *State exact measurement and whether for right or left side.*

8 D 1325—Single style. Shpg. wt. 1 lb. 10 oz. ... $8.89
8 D 1326—Double style. Shpg. wt. 1 lb. 14 oz. ... 9.99

ELASTIC WEBBING for trusses

Use this elastic webbing for trusses and artificial limbs. Made of good quality cotton woven over strands of heavy rubber for extra service. *Measure the webbing now used, order same width.* Buy Sears trusses for high quality at a low price.

Width Inches	Catalog Number	Shipping Weight	Price Yard
½	8 D 1300	2 oz.	39¢
¾	8 D 1301	3 oz.	59¢
1¼	8 D 1305	4 oz.	69¢
2	8 D 1302	4 oz.	99¢



The next two pages are pages 984-5 of Sears' 1949 catalog illustrating and describing trusses sold by Sears including the one supplied by Harad. Attention of the court is directed to the following:

1. The slogan ACTIVE LIFE shown on catalog page 985 refers to trusses other than the one supplied by Harad.

2. All trusses are identified only as SEARS APPROVED trusses, including the truss supplied by Harad.

3. Compare the line drawing of the bowler with the picture of the bowler shown in Deft's. Ex. 79 in this Appendix.

Plaintiff's Exhibit 00

SEARS APPROVED ATHLETIC TRUSS

- For the active man! Unbelievably comfortable
- Automatically self-fitting
- Scientifically designed so it cannot slip
- Maximum protection!

In sitting position you are covered maximum protection
When stretching down you get the maximum protection
Provides maximum protection for all active sports

For maximum protection wear perfect-fitting SEARS APPROVED Truss

- Strong elastic belt, understraps
- Comfortable pliable rubber pad
- Leg straps scientifically placed

$8.89 Single

You can enjoy an active life with this Sears Approved Athletic Truss. Designed to hold reducible hernia when you're doing heavy work or engaged in athletics. See your doctor! Extremely comfortable to wear. Has no steel bands or metal parts to pinch or bind. Thin pliable rubber pad remains fixed in position while soft, pliable truss moves with body. Provides maximum retention for all reducible hernias. Won't slip under strenuous activity, active sports, and everyday stretching and bending. Leg straps are scientifically placed not to interfere with normal body functions. Straps follow natural crease of buttocks and fasten at sides of body; cannot cross legs or ride buttocks. Excellent after operations to support tissues and aid in preventing recurrences of hernia. Made to support structures instead of pressing deeply at one point. Strong but comfortable elastic belt and understraps with pliable rubber front. Leather reinforcement at buckle. It's *Sears Approved*, your assurance of high quality. Even sizes 30 to 42. *State waist measurement, whether for right or left side.*

8 K 1323—Single style. Shipping wt. 1 lb. 10 oz. **$8.89**
8 K 1326—Double style. Shipping wt. 1 lb. 14 oz. **$9.98**

SEARS APPROVED SCROTAL TYPE TRUSSES

Use Scrotal style trusses to support low reducible ruptures firmly and comfortably. Equipped with understraps to hold pad in position effectively. All exposed metal parts are handsomely plated and highly polished. *Sears Approved* for high quality. Give exact measurement.

A Elastic Scrotal Style. For mild cases of rupture. Elastic webbing waistband. Cluderstrap. Two tension straps at the front position and pressure of leather-covered pad. Comes in even sizes 32 to 42. See **How to Measure** on opposite page. *Please state waist measurement and whether for right or left side.* Shipping weight 12 oz.

8 K 1312—Single style. $6.

B Scrotal Style Spring Truss. For firm support. Adjustable "anti-slip" pad is covered with corrugated rubber to grip the body better. Is padded spring is covered with soft leather. Soft rubber understraps. Even sizes 32 to 42. See **How to Measure** on opposite page. *Be sure to state exact measurement and whether for right or left side.*

8 K 1394—Single. Shipping wt. 1 lb.
8 K 1395—Double. Shipping wt. 1 lb. 12 oz.

SEARS APPROVED HOOD STYLE TRUSSES

Standard Hood Model

$5.69 Single

Use Hood style trusses for support of high, intermediate, or low type reducible ruptures. Resilient steel springs. Rigid front, back opening. Single style has dummy pad on unaffected side.

Standard Hood Model. Leather-covered pad, steel springs. Adjustable pads. Even sizes 32 to 42. See *How to Measure. State measurement, whether right or left side.* Wts. 1 lb. 2 oz.; 1 lb. 4 oz.

8 K 1348—Single style..... $5.69
8 K 1349—Double style..... $6.49

"Anti-slip" Hood Model

$7.79 Single

The pads on this truss are covered with corrugated non-slip rubber to hold firmly on the body.

Steel springs are covered with first-quality sweat-resistant leather. Comes in even sizes 32 to 42. See *How to Measure* on opposite page. *Please state exact measurement and whether for right or left side.* Excellent value!

8 K 1391—Single style. Shipping weight 1 lb. 2 oz..... $7.79

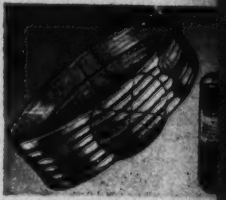
8 K 1393—Double style. Shpg. wt. 1 lb. 4 oz..... $8.98

Plastic Hood Style

$7.98 Single

Easy to keep clean and sanitary . . . just wipe with a wet cloth when you want to clean it! Pads and springs covered with smooth, light weight plastic. Won't absorb odors. May be worn while bathing or swimming. Fastens with sturdy leather strap. Excellent truss for year-round use! It's *Sears Approved*, your assurance of quality. Comes in sizes 30 to 42. *Please state exact measurement and whether for right or left side.* Shpg. wts. 1 lb. 1 oz.; 1 lb. 3 oz.

8 K 1315—Single style..... $7.98
8 K 1316—Double style..... $8.98



SEARS APPROVED UMBILICAL TRUSS

Gives secure support for navel ruptures. Soft sponge rubber pad. Elastic band permits free movement of the body. Washable, easy to keep sanitary. Comes in even sizes 34 to 44. In measuring, take measurement around body at navel. *Please state this exact measurement.*

8 K 1314—Shpg. wt. 1 lb. 4 oz..... Only

Dusting Powder for Trusses

No matter how perfectly your truss fits, it will fit better if you use this high-quality powder especially to use with surgical appliances. It's a soothing cushion between truss and body. Non-absorbent. A real aid to comfort.

8 K 1399—2-ounce can. Shpg. wt. 4 oz.
Two (3-ounce) cans. Shpg. wt. 7 oz.

ELASTIC BANDAGES of high quality

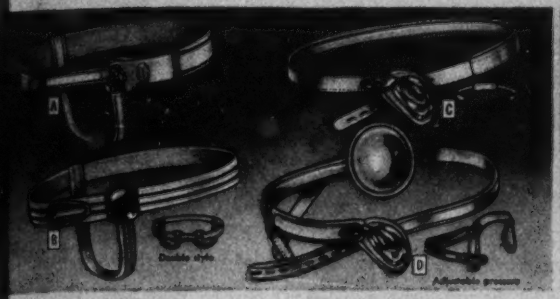
$1.00 2-inch **C Tensor Elastic Bandage.** Made with rubber. For varicose veins, dislocations, swellings. 50 feet stretched. Beige color. Washable. Postpaid (Shipping weight 4 ounces)

Width	Catalog No.	Each
2 inches	8 K 1402	$1.00
3 inches	8 K 1406	1.50
4 inches	8 K 1407	1.85

79c 2-inch **D Tetw Rubberless Elastic Bandage.** Special weave of cotton gives elasticity. 15 feet stretched. Cream color. For varicose veins, sprains.

Catalog No.	Width	Shpg. wt. each	Each	Two for
8 K 1444	2 in.	2 oz.	79c	$1.49
8 K 1448	3 in.	3 oz.	98c	1.89
8 K 1449	4 in.	4 oz.	$1.39	2.69

. . . . Trusses are available on Sears Easy Payment Terms. For details, see inside back cover



RUPTURED? YOU CAN STILL LEAD AN ACTIVE LIFE

SEARS APPROVED Elastic Style Trusses

...ve light pressure and comfortable support in less severe cases of high or intermediate reducible rupture. Comfortable wearing in bed. Washable elastic webbing.

$1.98 New York

New York Style. Reversible leather-covered pad—for either right or left side. Strong elastic webbing. Sizes 20 to 42. See *How to Measure* below. *State exact measurement.*

K 1310—Single style. Shpg. wt. 8 oz. $1.98

"Ide Combine" Style. Soft corrugated rubber for comfortable fit. Heavy, close-woven elastic webbing. Even sizes 32 to 42. See *How to Measure*. *Be sure to state exact measurement.* Shipping weights 8 ounces; 12 ounces.

K 1305—Single style. Fits right or left side. $3.98
K 1304—Double style. $4.98

SEARS APPROVED French Style Trusses

For restricting high or intermediate reducible ruptures. Adjustable pad. No understraps. Leather-covered steel springs.

Now Sells Now $3.98 NOW $3.89 Single

C "Poly-Flex" Model. Anti-slip rubber pad. Even sizes 32 to 44. *State measurement, whether for right or left side.*

K 1385—Single. Shpg. wt. 1 lb. $3.89
K 1386—Double. Shpg. wt. 1 lb. 4 oz. 3.98

D Adjustable Pressure Model. One simple motion regulates pressure on pad from firm to mild (see small view above). Anti-slip rubber pad. Leather back pad padded. See *How to Measure*. *State measurement, whether for right or left side.*

K 1380—Even sizes 32 to 42. Shpg. wt. 1 lb. 1 oz. $10.49

SUSPENSORIES

E Single-strap Style. Fits without understraps. Knit cotton pouch. Adjustable waistband of cotton webbing. Washable. *State choice: medium or large size pouch.*

49c Each

K 1478—Shpg. wt. ea. 2 oz. ... Each 49c Two for 93c

F Army-Navy Style. Pouch of cotton mesh bound in braid. Adjustable elastic understraps and waistband. Washable. *State choice of medium or large size pouch.*

K 1476—Shpg. wts. 3 oz.; 5 oz. Each 79c Two for $1.49

G Sears Approved. Seamless rayon pouch shaped to fit properly. Low opening. Adjustable elastic understraps and waistband. Washable. *State choice of medium or large size pouch.* An exceptional value!

K 1480—Shpg. wts. 3 oz.; 5 oz. Each $1.15 Two for $2.19

If you do not at present wear a truss, we suggest you see your family doctor on the style of truss to buy. SEARS APPROVED Trusses give you high quality and proper fit.

HOW TO MEASURE FOR TRUSSES. Have someone draw tape measure straight around the body in direct line with the point of rupture, as shown in the diagram at left. Take snug measurement over the bare skin—do not measure over clothes. Send us this exact measurement and we will send you the correct size truss. (Do not send waist measurement except for 8K1325 and 8K1326.)

NOTE For larger sizes than those listed, order the style you want at the price shown, and we will get it for you at no extra charge. Allow 60 days for special sizes. No C.O.D. orders.

Elastic Webbing for Trusses. Good quality cotton woven over strands of heavy rubber. *Measure webbing now used, order the same width.*

Width inches	Catalog number	Shipping weight	Price yard
⅞	8 K 1300	2 oz.	39c
1⅛	8 K 1301	3 oz.	69c
1¾	8 K 1302	4 oz.	79c
2	8 K 1282	4 oz.	89c

CRUTCHES, CANES . . select hardwood for safe, dependable support

...Rubber Crutch and Cane Tips. Highest quality natural rubber ...g life and service. Metal ...side tip increases wear. Fits ...inches and canes from ¾ to ¾ ...diameter. Shpg. wt. 7 oz.

K 1008—2 pairs. 69c

...Sponge Rubber Arm Cushions. ...help absorb shocks. Long wearing, comfortable. Fit top of all standard crutches. Shipping weight 1 ounce.

K 1014—Pair. $1.19

HOW TO MEASURE FOR CRUTCHES

Stand erect (shoes on), both feet flat on floor. Measure from armpits to floor at heel. Add 2 in. to this measurement. Used crutches are not returnable

K Standard Hardwood Crutch. Even sizes 36 to 60 inches. Rubber tip included. See *How to Measure* at left. *State length.*

8 K 01001—Shpg. wt. 1 lb. 12 oz. ... Each $1.19
Two crutches—Shpg. wt. 3 lbs. 8 oz. $2.09

L Adjustable Hardwood Crutch. Convenient and easy to use. Adjusts from 47 to 60 inches. Rubber tip for added safety—helps prevent slipping.

8 K 01002—Shpg. wt. 1 lb. 12 oz. ... Each $1.69
Two crutches—Shpg. wt. 3 lbs. 8 oz. $3.19

M Select quality Birch Maple Crutch. Combines safety with comfort. Attractively hand finished in clear varnish. Two-piece. Sweat-resistant leather-covered arm pad offers comfortable support . . . absorbs ground shock. Rubber tip. Guaranteed 1 year against defects in material and workmanship. Even sizes: 46 to 60 inches. See measuring instructions at left. *State length.*

8 K 01003—Shpg. wt. 1 lb. 12 oz. Each $7.49
Two crutches—Shpg. wt. 3 lbs. 8 oz. ... $12.95

N Hardwood All-Purpose Cane. Attractive dark finish. Rubber tip to help prevent slipping. 35 inches long. Shipping weight 1 pound.

8 K 01005 ..... 98c

P High Quality Mahogany Finish Cane. Horn ring around tip gives added strength, helps prevent splitting. Handsomely finished 36 inches long. Extremely well made for long service. Shipping weight 14 ounces.

8 K 01006 ..... $3.49

R "T" Hardwood Cane. Handle shaped like "T" for easy gripping. Rubber tip helps prevent slipping. Ebony colored hardwood. 36 inches long. Shipping wt. 12 ounces.

8 K 01004 ..... $2.79

INVALID CUSHIONS

These high quality cushions help avoid bedsores . . . offer greater comfort in sickroom, nursery, or office.

$2.69 8 K 2433

S All Rubber. Made of red natural rubber. Easy to inflate without pump. Non-leak valve. 15-inch diameter.

8 K 2433—Shpg. wt. 1 lb. 7 oz. ..... Each $2.69

T Hospital Quality. Sturdy, long-lasting. Hand made of tough rubber, cloth inserted. Air valve for easy inflation without pump.

8 K 2444—14-in. diam. Shpg. wt. 1 lb. $2.79
8 K 2446—16-in. diam. Shpg. wt. 1 lb. 2 oz. ... $3.29
8 K 2448—18-in. diam. Shpg. wt. 1 lb. 4 oz. ... 3.96

V Foam Rubber Cushion. Conforms to body contours for luxurious comfort. Made of 100% latex foam rubber covered with durable white cotton cover. Truly deluxe in every respect. 14-inch diameter, 2¼ inches thick.

8 K 1310—Shpg. wt. 1 lb. 4 oz. ... Each $3.98

The next two pages are 800 of Sears' 1950 catalog and the instruction sheet to Sears' artists for the preparation of said catalog page. The catalog page describes and illustrates SEARS APPROVED trusses; it does not show any truss supplied by Harad, but instead shows the Mack truss. Attention of the court is directed to the following:

1. The slogan *NEW* SEARS ATHLETIC TRUSS is employed for the first time.

2. Compare the rubber "3-contact pads" illustrated within the rectangular boxes for the *NEW* SEARS ATHLETIC TRUSS with the pads illustrated with the truss supplied by Harad shown with reference to differences in shape, design, use and method of illustration.

3. Compare the illustrative cut of the *NEW* SEARS ATHLETIC TRUSS with the previous cuts of the truss supplied by Harad.

4. Compare the line drawing of the man bowling with the figure of the man bowling shown in Defendant's Exhibit 79.

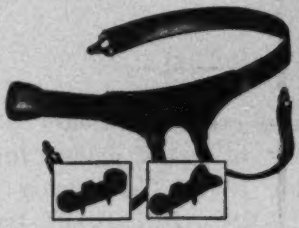
5. Note the absence of the three nude views of a man in different positions, views that were used in the advertising of the truss supplied by Harad.

6. Note the difference in the advertising copy for the New Sears Athletic Truss and that used for the Harad truss in previous catalogs. The instructions to Sears' artists is important in that it shows the care exercised by Sears not to use anything belonging to Harad in the advertising of the Mack truss.

Defendant's Exhibit 76

NEW SEARS ATHLETIC TRUSS

- New comfort for the active man
- Designed by a doctor for your safety
- Perfect to wear for work or sports
- Safer when bending, reaching, squatting



Wear SEARS APPROVED Truss for maximum protection

- 3-contact pads for your comfort
- Pads flexible anchored, cannot slip
- Comfortable, flexible rubber front

$7.49 Inguinal style

To give you new comfort when you wear a truss, Sears brings you this newly-designed Athletic Truss with 3-contact pads. Sensational new double-anchor pad does not slip or shift . . . it's similar to holding hernia with 3 fingers. Made of flexible rubber, it contacts hernia at 3 necessary points. This new painless pad compresses inguinal canal, in addition holds inner ring and outer ring of canal. Truss conforms perfectly to shape of abdomen . . . no bulge to show underneath clothing. The new **SEARS APPROVED** Athletic Truss is designed by a doctor to hold reducible hernia even though you do strenuous work or exercise. See your own doctor! Flexible rubber front, elastic webbing, non-cutting leg bands. Washable. A truss in which you can feel safer, whether bending, squatting, or coughing! Even sizes 30 to 42. *State waist measurement.* Two styles: for inguinal hernia and for scrotal hernia. Shpg. wt. 15 oz.

8 D 1327—*inguinal style truss.* Two pads, especially designed for inguinal rupture. $7.49

8 D 1328—*Scrotal style truss.* Two pads, designed for more advanced cases of scrotal rupture. $8.49

SCROTAL TYPE TRUSSES

Use Scrotal style trusses to support low reducible ruptures firmly and comfortably. Equipped with understraps to hold pad in position effectively. All exposed metal parts are heavily nickel plated and highly finished. *Sears Approved* for high quality. *Please give exact measurements.*

A **Elastic Scrotal Style.** For mild cases of ruptures. Elastic webbing waistband. Cloth understrap. Two tension straps at front control position and pressure of leather-covered scrotal pad. Comes in even sizes 32 to 42. *See How to Measure below. Please be sure to state measurement; also state whether for right or left side.* Shipping weight 12 ounces.

8 D 1312—Single. . $4.98

B **Scrotal Style Truss.** Two pads. Adjustable to prevent slip; pad covered with corrugated rubber to prevent body better. Well-padded spring. Leather-covered soft rubber understrap. Even sizes 32 to 42. *See How to Measure below. Please be sure to state measurement; also state whether for right or left side.* Shipping weight 1 lb., 1 lb. 12 oz.

8 D 1394—Single. $4.49

8 D 1395—Double. $6.49

HOOD STYLE TRUSSES

$5.98

Use Hood style trusses for support of high, intermediate, or low type reducible ruptures. Resilient steel springs. Rigid front, back opening. Single style has dummy pad on unaffected side. *Sears Approved* for high quality. "At Sears satisfaction is guaranteed!

C **Standard Hood Model.** Pads and steel springs covered with good quality leather. Pads are adjustable. Even sizes 32 to 42. *See How to Measure below. State measurement and whether for right or left side.* Shpg. wts. 1 lb. 2 oz.; 1 lb. 4 oz.

8 D 1348—Single. **$5.98**

8 D 1349—Double. . $6.98

D **Plastic Hood Style.** Pads and springs covered with smooth, lightweight plastic. Easy to clean! Won't absorb odors. Sizes 30 to 42. *Please state measurement and whether for right or left side.* Shipping weights 1 lb. 1 oz.; 1 lb. 3 oz.

8 D 1315—Single. **$8.98**

8 D 1316—Double. . $9.98

FRENCH STYLE

$3.98 Single

For restricting high or intermediate reducible ruptures. Adjustable pad. No understraps. *Sears Approved!*

E **"Grip-Tite" Model.** Special fixture makes anti-slip rubber pad easily adjustable. Leather-covered, padded steel springs. Even sizes 32 to 44. *State measurement and whether for right or left side.* Shpg. wts. 1 lb.; 1 lb. 4 oz.

8 D 1305—Single. . . $3.98

8 D 1306—Double. . . 5.98

ELASTIC STYLE

$3.98 Single

Gives light pressure, comfortable support in less severe cases of high or intermediate reducible rupture.

F **"Air Cushion" Style. SEARS APPROVED.** Corrugated rubber pad. Elastic webbing. Even sizes 32 to 42. *State measurement.* Shpg. wts. 8 oz.; 12 oz.

8 D 1303—Single. . Fits right or left side. . . . $3.98

8 D 1304—Double. . . 4.98

UMBILICAL TRUSS

$4.69 Each

G Gives secure support for navel ruptures. Soft sponge rubber pad. *Sears Approved* for your protection.

Elastic band permits free movement of the body. Washable. Comes in even sizes 34 to 44. In measuring, take snug measurement around body at navel. *Please state this exact measurement.* Shpg. wt. 1 lb. 4 oz.

8 D 1314—Only. $4.69

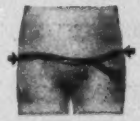
SURGICAL APPLIANCE POUCHES

Makes any support better. Made especially to use with surgical appliances. Acts as a protective cushion between appliance and body. Shipping weight 4 oz., 5 oz.

8 D 1299—2-oz. size. Each

Two (2-oz.) cans for

Do you need a truss? If so, we suggest you read our handy chart on the style of truss to buy.



HOW TO MEASURE FOR TRUSSES. Draw tape measure around body in direct line with point of rupture, as shown above. Take snug measurement over bare skin—do not measure over clothes. Send us this exact measurement. (Do not send waist measurement except for 8D 327 and 8D 1328.)

Note: For larger sizes than those listed, order the style you want at price shown. We will get it for you at no extra charge. Allow 60 days for special sizes. Sorry, no C.O.D. orders.

Elastic Webbing for Trusses. Good quality cotton woven over strands of heavy rubber. *Measure webbing new need, order same width.*

Width Inches	Catalog No.	Shpg. wt.	Price yard
½	8 D 1300	2 oz.	49c
1½	8 D 1301	3 oz.	69c
1¾	8 D 1303	4 oz.	79c
2	8 D 1302	4 oz.	89c

Order SEARS APPROVED *Trusses for proper fit and long wear. Satisfaction guaranteed.*

73c 2-inch

D **Rubberless Elastic Bandage.** Special weave of cotton gives elasticity. 15 feet stretched. Cream color. For varicose veins, sprains. 2-inch, 3-inch, and 4-inch widths reduced in price from last fall.

Catalog No.	Width	Shpg. wt. each	Each	Two for
8 D 1446	2 in.	2 oz.	73c	$1.39
8 D 1448	3 in.	3 oz.	90c	1.69
8 D 1449	4 in.	4 oz.	$1.19	2.19
8 D 1408	5 in.	4 oz.	1.59	2.98
8 D 1409	6 in.	4 oz.	1.79	3.38

SUSPENSORIES . . Sears guarantees quality

H **Single-Strap Style.** Fits without understraps. Knit cotton pouch. Adjustable waistband of cotton webbing. Washable. *Please state choice: medium or large size pouch.*

8 D 1478—Shipping wt. each 2 oz. . . . Each 49c

Two for only. 93c

49c Each

J **Army-Navy Style.** Pouch of cotton bound in braid. Adjustable elastic straps and waistband. Washable. *State if medium or large size pouch.*

8 D 1476—Shpg. wt. 3 oz. . . . . Each

Buy 2 and save. Shpg. wt., 5 oz. Two only. . . . . Each

K **SEARS APPROVED.** Seamless rayon pouch shaped to fit properly. Low cutting. Adjustable elastic understraps and waistband. Washable. *Please state choice of medium or large size pouch.* Exceptional value!

8 D 1480—Shpg. wt. 3 oz. . . . . Each

Buy 2 and save! Shpg. wt., 5 oz. Two for only. . . . . Each

All trusses are available on Sears Easy Payment Terms. For details, see inside back cover

Defendant's Exhibit 76

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DEFENDANT'S EXHIBIT 76

SEARS, ROEBUCK AND CO.,
CHICAGO 7, ILL.

No. 28187

6578

LAYOUT AND ART ORDER

(ORIGINAL-TO SOURCE)

Date 9-7-49

Book "F" Gen.

Page 608

Comp. No. 142

Form No.

All information in this box must be shown on invoice.

ORDER ISSUED TO Illustro

INSTRUCTIONS TO SOURCE: *Please perform the work ordered below and submit invoice within 10 days to Sears, Roebuck and Co., Dept. 747, Art Cost Control Division.*

ALL OLD ART:

Pick up old art from pages 984and 985 Chi '49 "F" Gen.

Note:

Prepare page as indicated by layout; it is requested that a flap be made over the feature Truss #1325. We wish to have artwork ready on a new Truss to replace the #1325 if the source can supply them in time for this book.
The new Truss will be #1327 with two individual pads #1328 and #1329. Samples are available for immediate pickup in this office.
Show "use views" as indicated by the layout, but do not use the same three small views. (The ones in the "F" book in black frames.) These are the manufacturer's views and are not to be used with another product. It's O.K. to use the farmer and bowler for both. Shoot the new Truss for the flap as indicated on the tissue enclosed herewith.

INFORMATION TO SOURCE:

To aid us in handling your invoices promptly:

1 This is not a fee order until signed by the Art Buyer.

2 Please show all reductions in box above.

3 Bills for any work not covered by written instructions hereon will not be honored.

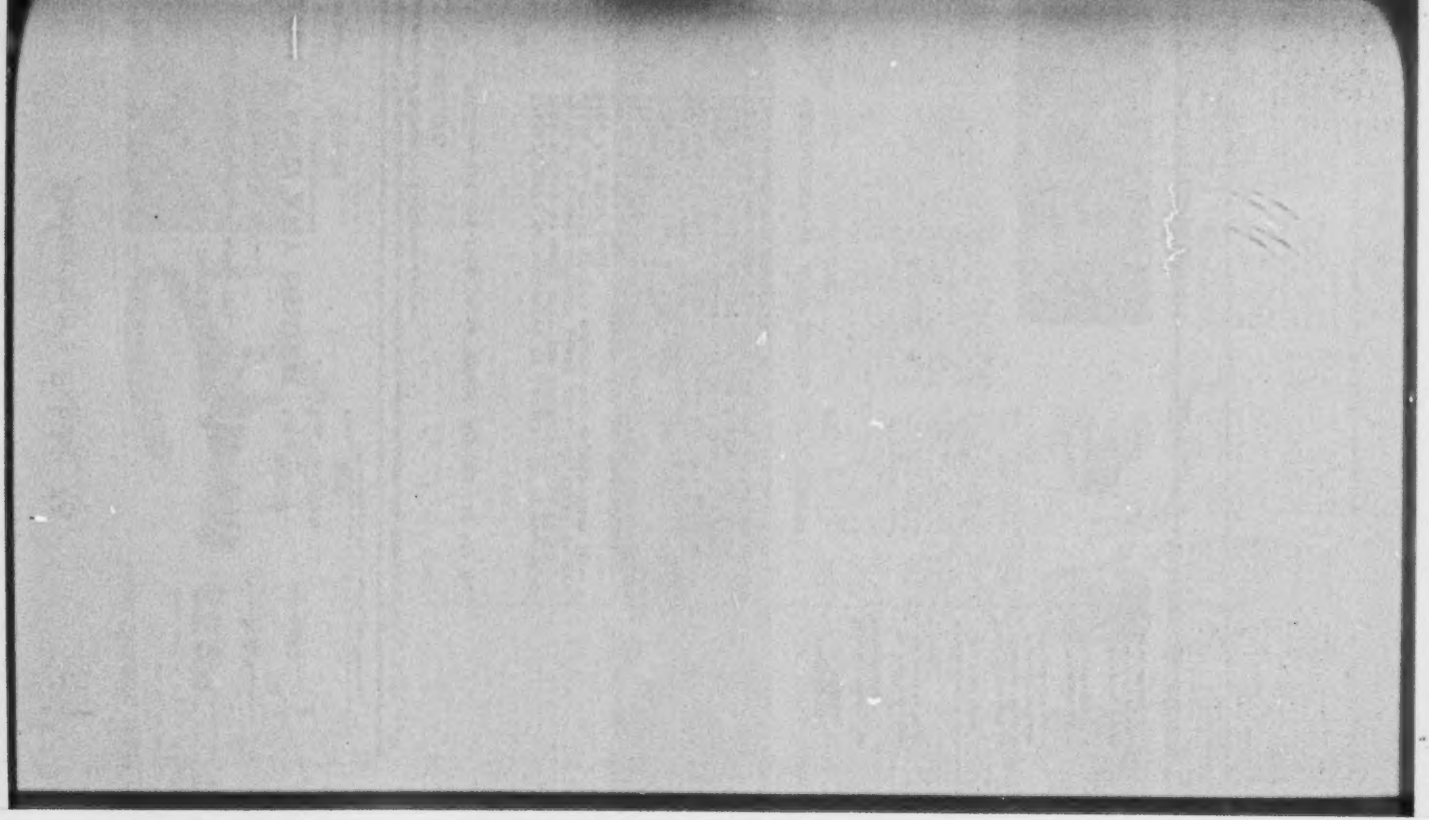
4 Bill in triplicate and attach proof or photostats.

5 Model's service must be covered by properly signed releases.

Ordered By: E Terry

Dispatch Sales Dept.

Dispatch Art Buyer



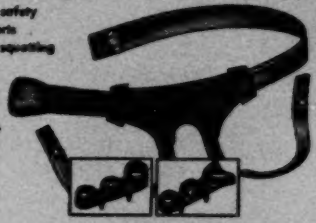
Plaintiff's Exhibit TT

54

Utmost comfort for active men!

SEARS APPROVED Athletic Truss gives positive 3-way support

- Designed by a doctor for your safety
- Perfect to wear for work or sports
- Safer when bending, reaching, squatting



- 3-contact pads for your comfort
- Pads double anchored, cannot slip
- Comfortable, flexible rubber front

$7.49 Inguinal style

To give you the utmost comfort when you wear a truss, Sears brings you this scientifically-designed Athletic Truss with 3-contact pads. Sensational double-anchor pad does not slip or shift . . . it's similar to holding hernia with 3 fingers. Made of flexible rubber, it contacts hernia at 3 necessary points. This pubbon pad compresses inguinal canal, in addition holds inner ring and outer ring of canal. Truss contours perfectly to shape of abdomen . . . no bulge to show underneath clothing. The SEARS APPROVED Athletic Truss is designed by a doctor to hold reducible hernia, even though you do strenuous work or exercise. See your own doctor! Flexible rubber front, elastic webbing, non-cutting leg bands. Washable. A truss in which you can feel safer, whether bending, squatting, or coughing! Even sizes 30 to 42. State waist measurement. Two styles: for inguinal hernia and for scrotal hernia. Shpg. wt. 15 oz.

8 E 1272—Inguinal style truss. Two pads, especially designed for inguinal rupture.....$7.49

8 E 1325—Scrotal style truss. Two pads, designed for more advanced cases of scrotal rupture.... 8.49

SCROTAL TYPE TRUSSES

Use Scrotal style trusses to support low reducible ruptures firmly and comfortably. Equipped with understrap to hold pad in position effectively. All exposed metal parts are heavily nickel plated and highly polished. *Sears Approved* for high quality. *Please give exact measurement.*

$4.98 Elastic Scrotal Style

A **Elastic Scrotal Style.** For mild cases of rupture. Elastic webbing waistband. Cloth understrap. Two tandem straps at front control pressure and prevent displacement of rubber-covered scrotal pad. Comes in even sizes 32 to 42. See How to Measure below. *Please be sure to state measurement, also state whether for right or left side.* Shipping weight 13 ounces.

8 E 1512—Single...$4.98

B **Scrotal Style Spring Truss.** Adjustable "anti-slip" pad covered with corrugated rubber to grip body better. Well-padded spring, leather-covered, soft rubber understrap. Even sizes 32 to 42. See How to Measure below. *Please be sure to state measurement, also state whether for right or left side.* Shpg. wt. 1 lb.; 1 lb. 12 oz.

8 E 1304—Single...$6.98

8 E 1395—Double...$8.98

HOOD STYLE TRUSSES

Use Hood style trusses for support of high, intermediate, or low type reducible ruptures. Resilient steel springs. Rigid front, lock opening. Single style has dummy pad on unaffected side. *Sears Approved* for high quality. At Sears satisfaction is guaranteed!

$5.98 Standard Hood Style; Single

C **Standard Hood Model.** Pads and steel springs covered with good quality leather. Pads are adjustable. Even sizes 32 to 42. See How to Measure below. State measurement and whether for right or left side. Shpg. wts. 1 lb. 2 oz.; 1 lb. 4 oz.

8 E 1340—Single...$5.98

8 E 1340—Double...$6.98

D **Plastic Hood Style.** Pads and steel springs covered with smooth, light-weight plastic. Easy to clean! Won't absorb odors. Sizes 30 to 42. *Please state measurement and whether for right or left side.* Shipping weights 1 lb. 1 oz.; 1 lb. 3 oz.

8 E 1313—Single...$8.98

8 E 1314—Double...$9.98

FRENCH STYLE

$3.98 Single

For restricting high or intermediate reducible ruptures. Adjustable pad. No understraps. *Sears Approved!*

E **"Ship-Thin" Model.** Special flatter model, anti-slip rubber pad easily adjustable. Leather-covered, padded steel springs. Even sizes 32 to 44. State measurement and whether *for right or left side.* Shipping weights 1 pound, 1 pound 4 ounces.

8 E 1385—Single...$3.98

8 E 1386—Double...$5.98

ELASTIC STYLE

Gives light pressure, comfortable support in ten seven sizes of high or intermediate reducible rupture.

$3.98 Single

F **"Ab-Gidden" Style. Sears APPROVED.** Non-rusting rubber pad. Elastic webbing. Even sizes 32 to 42. State measurement. Shpg. wt. 8 oz.; 12 oz.

8 E 1305—Single. Fits right or left side.....$3.98

8 E 1304—Double...$4.98

UMBILICAL TRUSS

$4.69 Each

G Gives secure support for navel ruptures. Soft sponge rubber pad. *Sears Approved* for your protection.

Elastic band provides firm support of that tender spot. Washable, easy to keep sanitary. Comes in even sizes 24 to 44. In measuring, take snug measurement around body at navel. *Please state desired measurement.* Shpg. wt. 1 lb. 4 oz.

8 E 1316—Only.....$4.69

You may buy trusses on Sears Easy Terms. *For details, see inside back cover.*

SURGICAL-APPLIANCE POWDER

Makes any support feel better. Made especially for use with surgical appliances. Acts as a soothing medium between support and body. Shipping wts. 4 oz.; 7 oz.

8 E 1399—2-oz. can...60c

Two (2-oz.) cans for...$1.09

Do you need a truss? If so, we suggest you see your family doctor as to the style of truss to buy.

HOW TO MEASURE

Use tape measure around body in direct line with point of rupture, as shown above. Use same measurement over bare skin—do not measure over clothes. Send us this exact measurement. (Do not add waist measurement except for 8 E 1377 and 8 E 1338.)

Elastic Webbing for Trusses. Good quality cotton woven over strands of heavy rubber. *Measure* webbing near mid, order same width.

Width Inches	Catalog No.	Shpg. wt.	Price per yard
¾	8E1305	2 oz.	49c
1¼	8E1301	3 oz.	69c
1¾	8E1302	4 oz.	79c
2	8E1303	4 oz.	99c

Order SEARS APPROVED Trusses for proper fit and long wear. Satisfaction guaranteed.

73c 2-inch

Rubberized Elastic Bandage. Special weave of cotton threads gives it elasticity. Length when stretched, about 14 feet. Cream color. For various sizes, state whether for ankles, knees and wrists. Retains even tension.

Catalog No.	Width	Shpg. wt. each	Each	Two for
8 E 1446	2 in.	2 oz.	75c	$1.39
8 E 1448	3 in.	3 oz.	99c	1.69
8 E 1449	4 in.	4 oz.	$1.19	2.19
8 E 1450	5 in.	4 oz.	1.39	2.59
8 E 1499	6 in.	4 oz.	1.79	3.39

SUSPENSORIES . . priced low at Sears!

49c Single-Strap Style. Each

H Fine, white Sateen pouch. Knit cotton pouch. Adjustable webbing of cotton webbing. Washable. *Please be sure to state choice: medium or large size pouch.*

8 E 1479—Shpg. wt. each 2 oz.. Each 49c

Two for only.....98c

Army-Navy Style. Pouch of cotton mesh knitted in tubular. Adjustable elastic webbing and leg straps. Washable. *State choice of medium or large size pouch.*

8 E 1478—Shpg. wt. 3 oz.....Each 79c

Buy 2 and save! Shpg. wt. 5 oz. Two for only $1.49

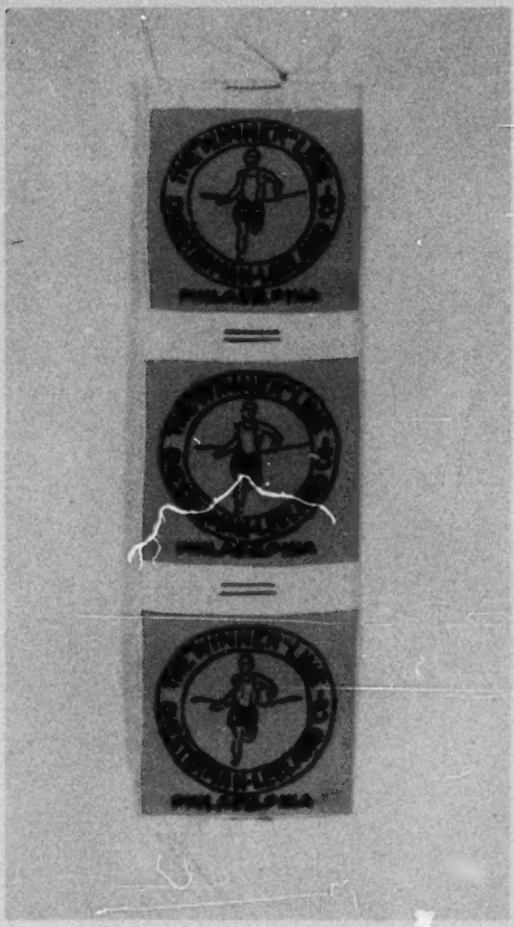
SEARS APPROVED. Seamless cotton pouch shaped to fit properly. Low opening. Adjustable elastic understraps and waistband. Washable. *Please state choice of medium or large size pouch.* Exceptional value!

8 E 1480—Shpg. wt. 3 oz.....Each $1.15

Buy 2 and save! Shpg. wt. 5 oz. Two for only $2.19

Read interesting articles in the field of medicine in American Peoples Encyclopedia. For Encyclopedia, see Index

Defendant's Exhibit 13



53

Defendant's Exhibit 97

Registered Jan. 1, 1935 **Trade-Mark 320,575**

UNITED STATES PATENT OFFICE

Chesterman-Leeland Co., Philadelphia, Pa.

Act of February 20, 1905

Application September 6, 1934, Serial No. 255,782

STATEMENT

To the Commissioner of Patents:

Chesterman-Leeland Co., a corporation duly organized under the laws of the State of Pennsylvania, and located at Philadelphia, in the county of Philadelphia, and State of Pennsylvania, and doing business at 902 Montgomery Avenue, Philadelphia, Pennsylvania, has adopted and used the trade-mark shown in the accompanying drawing, for ELASTIC ATHLETIC SUPPORTERS, SURGICAL TRUSSES, ABDOMINAL SUPPORTERS, ELASTIC HOSIERY, AND SUSPENSORIES, in Class 44, Dental, medical, and surgical appliances, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended. The trade-mark has been continuously used and applied to said goods in applicant's business as follows: The word "Winner" and the representation of an athlete arriving at the finish line tape and breaking the same has been used by the applicant since June 3, 1929. The trade-mark as shown on the drawing and on the specimens submitted along with this application has been used by the applicant since August 6, 1934. The applicant is also proprietor of trade-mark certificate of registration No. 188,152 issued on August 19, 1924. The trade-mark is applied or affixed to the goods, or to the packages containing the goods, by placing thereon a woven label on which the trade-mark is shown and in divers other ways known to the trade.

The undersigned hereby appoints Michael Saxe, Esq., of 141 North 15th Street, Philadelphia, Pa., and A. D. Caesar and Charles W. Rirse, Esquires, of 1321 Arch Street, Philadelphia, Pa., its attorneys to prosecute this application for registration, with full power of substitution and revocation, to make alterations and amendments therein, to receive the certificate and to transact all business in the Patent Office connected therewith.

CHESTERMAN-LEELAND CO.,
By DANA L. CHESTERMAN,
Secretary.

Defendant's Exhibit 97

Registered Jan. 1, 1935

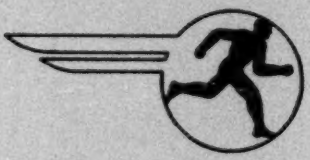
Trade-Mark 320,530

UNITED STATES PATENT OFFICE

Stride Products Corporation, Cleveland, Ohio

Act of February 20, 1905

Application August 30, 1934, Serial No. 215,102



STATEMENT

To the Commissioner of Patents:

Stride Products Corporation, a corporation duly organized under the laws of the State of Ohio, and located at Cleveland, Ohio, and doing business at 1276 Ontario Street, Cleveland, Ohio, has adopted and used the trade-mark shown in the accompanying drawing for CORN PADS, METATARSAL SUPPORTS, ARCH SUPPORTS, CALLOUS PADS, CALLOUS CUSHIONS, BUNION SHIELDS, BUNION PADS, HEEL CUSHIONS, ARCH BINDERS, ANKLE SUPPORTS, AND HEEL CUPS, in Class 44, Dental, medical, and surgical appliances, and presents herewith five specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark has been continuously used and applied to said goods in applicant's business since March 17, 1934. The trade-mark is applied or affixed to the goods by printing it upon the boxes or packages containing the same, by placing thereon a printed label on which the trade-mark is shown, or in other ways customary in the trade.

The undersigned hereby appoints Evans & McCoy (a firm composed of Lloyd L. Evans and William C. McCoy) of Bulkley Building, Cleveland, Ohio, its attorneys, to prosecute this application for registration, with full powers of substitution and revocation, to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

STRIDE PRODUCTS CORPORATION,
By W. E. CROFUT, Jr.
Vice President.

Enjoy an active life with

The Sportsman Truss

Unbelievable Comfort and Guaranteed NOT TO SLIP or Your Money Refunded

$9.50

Plain Style Double Side Model

Consider these essential features

- ★ Scientifically Designed for Self-Fitting
- ★ Maximum Protection
- ★ Real Comfort Without Pistol
- ★ It is Unconditionally Guaranteed

Steel truss wearers . . . Now it is possible to get maximum retention with real comfort. The Sportsman has no steel bands or metal parts to gouge or pinch. There is nothing to bind. Every part is flexible. Yes, and it CAN'T SLIP! Why? Because the inner pad remains fixed in its position, while the soft, pliable cross member with the body. The Sportsman provides maximum retention for all reducible inguinal hernias and won't slip under strenuous activity, active sports and everyday stooping and bending.

No Personal Fitting! Buy Over The Counter!
Take Home, Put On And Forget Your Truss!

962

Consider 3 things when you select your truss!

CORRECT FITTING
MAXIMUM PROTECTION
REAL COMFORT

Put it on and you know IT! You can enjoy an ACTIVE LIFE . . . do the things you like to do, engage in strenuous work, heavy lifting, physical sports, play and work hard with this garment. It is actually possible to engage in ordinary athletics with safety.

Sold by leading drug stores, surgical supply and mail order houses throughout the U.S.

INDUSTRIAL ENGINEERING ASSOCIATES

P. O. Box 1517 · Minneapolis 4, Minn.

Truss

.50

Consider 3 things

when you select your truss!

CORRECT FITTING
MAXIMUM PROTECTION
REAL COMFORT

Sold by leading drug stores, surgical supply and mail order houses

Manufactured by

INDUSTRIAL ENGINEERING ASSOCIATES

ATHLETIC TRUSS

• COMFORT
• SELF-FITTING
• CAN'T SLIP

for all REDUCIBLE INGUINAL HERNIAS

TO PUT ON AND ADJUST YOUR TRUSS

PUT ON WHILE LYING DOWN

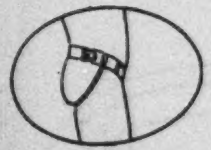
PLACE THE RUBBER COLUMNS IN THE FRONT PIECE OF THE TRUSS IN THE DESIRED POSITION AS SUGGESTED BY CHARTS.

APPLY TRUSS WHILE LYING DOWN AFTER THE HERNIA HAS BEEN FULLY REDUCED BY GENTLE MASSAGE AND PRESSURE. THE FRONT PIECE SHOULD BE LAID ACROSS THE LOWER ABDOMEN SO THAT THE LOWER EDGE TOUCHES WHERE THE LEGS JOIN THE BODY.

ARCH YOUR BACK

AFTER RAISING YOUR BACK, PASS THE BROAD BELT UNDER THE BODY, HOOKING THE BUCKLE ONTO ITS OWN STUD AND PASS THE LEG STRAPS BENEATH THE LEGS TO HOOK THE BUCKLE ON THE STUDS OF THE SAME SIZE, TAKING CARE THAT THE STRAPS ARE NOT CROSSED OR TWISTED. TIGHTEN THE ABDOMINAL STRAP UNTIL IT IS SNUG AND THEN TIGHTEN THE LEG STRAPS UNTIL THEY ARE SNUG. AFTER ADJUSTING THE STRAPS BE SURE THAT THE POINTS ON THE BUCKLES LIE BENEATH THE PROTECTING METAL SHIELD TO PREVENT ANY DAMAGE TO THE CLOTHES.

THE LEG STRAPS



THE LEG STRAPS ARE SO CONSTRUCTED THAT THEY FOLLOW THE NORMAL CREASES OF THE BUTTOCKS MUSCLES AND DO NOT CUT OR IRRITATE EITHER THE GENITAL ORGANS OR THE MUSCLES AROUND WHICH THEY RIDE. THIS FIXED POSITION OF THE LEG STRAPS VARIES IN THE DIFFERENT SIZES TO CONFORM WITH THIS BUTTOCKS CREASE IN VARYING SIZES. RESULTING IN AN [illegible], EASY, COMFORTABLE AND EFFICIENT SUPPORT. REMEMBER THE LEG STRAPS ACT AS A DOUBLE ANCHOR AND IF LEG STRAPS ARE SNUG YOU WILL HAVE A CORRECT FITTING TRUSS.

CORRECT POSITION OF TRUSS

POSITION OF TRUSS AFTER IT IS PROPERLY FITTED. WHERE ABDOMENS ARE FLESHY THE EXCESS FLESH SHOULD BE PULLED UP WHILE APPLYING THE TRUSS AND THEN PERMIT IT TO FALL DOWN. THIS ACTS AS A MODERATE UPLIFT IN THE INGUINAL REGIONS WITHOUT CUTTING OR GOUGING. THE ACTIVE MAN TRUSS GIVES MORE SUPPORT TO LARGE ABDOMENS THAN ANY OTHER TRUSS.

GENERAL INSTRUCTIONS

TRIM OFF THE PROTRUDING PAD POINTS WITH SCISSORS OR A RAZOR BLADE, LEAVING ABOUT 1/8 INCH OF RUBBER ABOVE THE FRONT PIECE AFTER THE TRUSS IS PROPERLY FITTED. ALSO TRIM OFF THE EXTRA RUBBER BANDS, LEAVING ABOUT 2 INCHES FOR ANY FUTURE NECESSARY ADJUSTMENTS.

THE HOOKS AND RIVETS MUST BE USED IN APPLYING AND REMOVING THE TRUSS AFTER IT IS PROPERLY FITTED. USE OF THE BUCKLES ALTERS THE PROPER ADJUSTMENT AND WILL QUICKLY WEAR OUT THE ELASTIC STRAPS.

IF THE HERNIA IS NOT EFFICIENTLY HELD IN, THE FRONT PIECE WAS NOT PLACED LOW ENOUGH. THE WAISTBAND IS TOO LOOSE OR THE LEG STRAPS WERE NOT TIGHTENED SUFFICIENTLY. THIS TRUSS IS SELF-FITTING IF THE PROPER MECHANICAL ADJUSTMENT IS MADE. THE TRUSS SHOULD FIT SNUGLY TO THE MUSCLES IT IS SUPPORTING.

AFTER PROPER ADJUSTMENT IS MADE, CUT THE TOPS OFF THE RUBBER COLUMNS LEAVING 1/8 INCH ABOVE THE SURFACE OF THE TRUSS AND TRIM THE SURPLUS ELASTIC BANDS TO WITHIN 1½ INCH OF THE BUCKLES. BE SURE THE TRUSS IS WORKING EFFICIENTLY BEFORE CUTTING ANY PARTS.

THE HOOKS AND RIVETS MUST BE USED IN APPLYING AND REMOVING THE TRUSS AFTER IT IS PROPERLY FITTED. USE OF THE BUCKLES ALTERS THE PROPER ADJUSTMENT AND WILL QUICKLY WEAR OUT THE ELASTIC STRAPS. JUST SNAP THE BUCKLES OVER THE PROTRUDING STUD TO REMOVE OR PUT ON TRUSS.

ON SENSITIVE SKINS PROTECT THE BODY BY PLACING CLEAN HANDKERCHIEFS OR OTHER CLEAN COTTON MATERIAL BETWEEN THE PADS AND THE BODY WHERE ANY DISCOMFORT ARISES. WASH TRUSS WHEN NECESSARY WITH SOAP AND WARM WATER.

REMEMBER THE TRUSS MUST BE SNUG AND TIGHT TO HOLD HERNIA EFFICIENTLY. THIS RULE APPLIES TO LEG BANDS AS WELL AS BELT.

A MESSAGE TO YOUR PHYS

IF YOU ARE UNDER A DOCTORS CARE

SHOW THIS PAGE TO YOUR DOCTOR

3 POINT PRESSURE TRUSS PADS (See Illust

DESIGNED TO MEET THE ANATOMICAL REQUISITES OF AN INGUI

THE INGUINAL LIGAMENT IS APPROXIMATELY 4 5/8 INCHES LONG. RING LIES HALF WAY UP THIS LIGAMENT AND 1/2 INCH ABOVE IT. INCHES FROM THE INTERNAL RING TO THE EXTERNAL RING.

PRESSURE OVER THE EXTERNAL RING SHOULD BE AT THE PUBIC TUB INCH BEYOND THE FASCIAL OPENING - REQUIRING AN OVERALL L INCHES FROM PRESSURE POINT TO PRESSURE POINT TO PROPERLY TOTAL INGUINAL CANAL.

THIS PAD HAS THE FOLLOWING FEATURES: THREE POINT PRESSU INGUINAL CANAL TO COMPRESS AND SUPPORT THE ANATOMICAL STRU

1. PRESSURE EQUIVALENT TO THE TIP OF THE MIDDLE F INTO THE INTERNAL RING, OR THE AREA AT WHICH ING HERNIAS ORIGINATE.
2. TRANSVERSE PRESSURE EQUIVALENT TO THE MIDDLE F COMPRESSING THE INGUINAL CANAL AT ITS MIDDLE OR TRAL PORTION TO ELIMINATE IMPULSES SLIPPING TH THE CANAL.
3. PRESSURE EQUIVALENT TO THE GROUPED ENDS OF THRE GERS FITTING IN AND PLUGGING THE EXTERNAL RI OPENING ALONGSIDE THE PUBIC TUBERCLE.

THIS THREE POINT PRESSURE IS EFFICIENT SINCE IT:

1. IS CONSTRUCTED TO COMPRESS THE ENTIRE CANAL SCI CALLY OVER A 2½ INCH AREA INSTEAD OF JUST PLU THE EXTERNAL RING AS MOST PADS DO.
2. HAS A THREE POINT PRESSURE TO COMPRESS THE TI INSTEAD OF A TUBE OR RIDGE THAT IS EASILY DISP TO PERMIT THE HERNIAL CONTENT TO SLIP BEHIND IT SITTING, COUGHING OR STRAINING.
3. WILL EFFICIENTLY CONTROL HERNIAS IN THE ING CANAL AS THEY ORIGINATE, AS THEY BECOME LARGE PASS DOWN THE CANAL, OR AS THEY EMERGE INT SCROTAL AREA.

SCIENTIFICALLY THESE PADS ARE CONSTRUCTED SO THAT:

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3. THE EXTRA ELEVATION APPLIES PRESSURE ABOVE TH TERNAL RING, AS WELL AS OVER IT, ALONG WITH SU ING THE ENTIRE INGUINAL CANAL.
4. NOTE THE FLEXIBLE TABS (ILLUSTRATION ON FRONT O CULAR) WHICH ARE ATTACHED TO LEG BANDS AND SU MOST EFFECTIVELY THE AREA BELOW THE BOTTOM TIP This NEWLY DESIGNED SCROTAL PAD SUPPORTS WEAKN THE RECTUS ABDOMINIS MUSCLE ABOVE THE PUBIC WHERE DIRECT HERNIAS AND SURGICAL RECURRENCES O
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IN PROBLEM CASES OR THOSE DIFFICULT TO HOLD, PLACING A BETWEEN THE PAD AND THE BODY INCREASES THE LOCAL AREA OF SUPPORT.

IN INGUINAL CASES THAT ARE "DIFFICULT TO HOLD" IT IS REC THE "SCROTAL" TRUSS AND PADS BE USED.

SEARS APPROVED T

SEARS ROEBUCK &

A MESSAGE TO YOUR PHYSICIAN

IF YOU ARE UNDER A DOCTORS CARE

SHOW THIS PAGE TO YOUR DOCTOR

3 POINT PRESSURE TRUSS PADS (See Illustration)

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THE INGUINAL LIGAMENT IS APPROXIMATELY 4 5/8 INCHES LONG. THE INTERNAL RING LIES HALF WAY UP THIS LIGAMENT AND 1/2 INCH ABOVE IT, OR OVER 2¼ INCHES FROM THE INTERNAL RING TO THE EXTERNAL RING.

PRESSURE OVER THE EXTERNAL RING SHOULD BE AT THE PUBIC TUBERCLE OR 1/4 INCH BEYOND THE FASCIAL OPENING - REQUIRING AN OVERALL LENGTH OF 2¾ INCHES FROM PRESSURE POINT TO PRESSURE POINT TO PROPERLY SUPPORT THE TOTAL INGUINAL CANAL.

THIS PAD HAS THE FOLLOWING FEATURES: THREE POINT PRESSURE OVER THE INGUINAL CANAL TO COMPRESS AND SUPPORT THE ANATOMICAL STRUCTURES.

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SEARS APPROVED TRUSS

SEARS ROEBUCK & CO.

PATENT PENDING

ACTIVE MAN

INCORPORATING THE FIRST SC
VANCE IN TRUSS DESIGN IN YE
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COMFORT--WITH GREATER FREED
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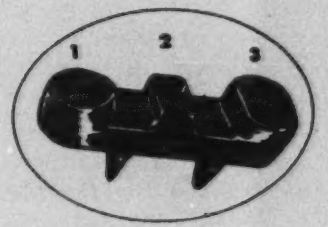

REVOLUTIONARY "3-WAY" SUP

for Inguinal hernias

A NEW SCIENTIFICALLY DESIGNED PAD THAT PROVIDES THREE WAY SUPPORT-WITH THREE POINTS OF PRESSURE CONTACT. THE TOP ONE COMPRESSES THE INGUINAL CANAL AT UPPER POINT, WHERE HERNIA USUALLY ORIGINATES (MILD CASE) THE CENTER ONE COMPRESSES THE CANAL, PREVENTING THE HERNIA FROM ADVANCING. THE BOTTOM ONE COMPRESSES THE CANAL EXIT (EXTERNAL RING) WHERE IN ADVANCED CASES, THE BOWELS PROTRUDE AND THE "SWELLING" OCCURS

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MESSAGE TO YOUR PHYSICIAN

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EARS ROEBUCK & CO.

ACTIVE MAN TRUSS CHICAGO

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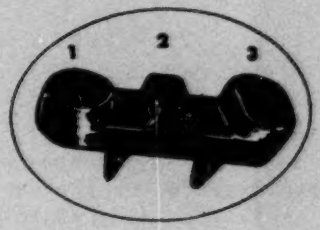
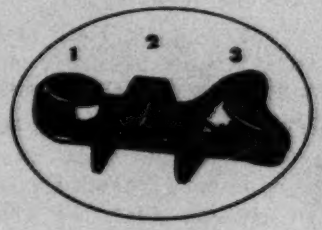
INCORPORATING THE FIRST SCIENTIFIC ADVANCE IN TRUSS DESIGN IN YEARS!! GIVES POSITIVE THREE WAY SUPPORT--WITH UTMOST COMFORT--WITH GREATER FREEDOM OF MOVEMENT. . . . . .





REVOLUTIONARY "3-WAY" SUPPORT PADS

for Inguinal hernias

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for Scrotal hernias

THE ACTIVE MAN TRUSS PAD FOR SCROTAL HERNIA IS OF APPROVED AND ADVANCED DESIGN TO PROVIDE POSITIVE SUPPORT. IT DIFFERS FROM THE INGUINAL TYPE ONLY IN THE BOTTOM SEGMENT OF IT'S THREE SUPPORTING MEMBERS-TO CLOSE OFF AND SUPPORT THE HERNIA AT THE LOWER OUTLET (EXTERNAL RING) OF THE CANAL. THIS LOWER SEGMENT PROVIDES SUPPORT AT AREAS ON BOTH SIDES OF EXTERNAL RING.

Read The Comforting Details Inside

Office - Supreme Court
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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 374

CHARLES F. HARAD, AND SARA E. HARAD, CO-PARTNERS DOING BUSINESS AS INDUSTRIAL ENGINEERING ASSOCIATES,

Petitioners,

vs.

SEARS, ROEBUCK & CO.

Respondent.

REPLY BRIEF SUPPORTING PETITION FOR A WRIT OF CERTIORARI

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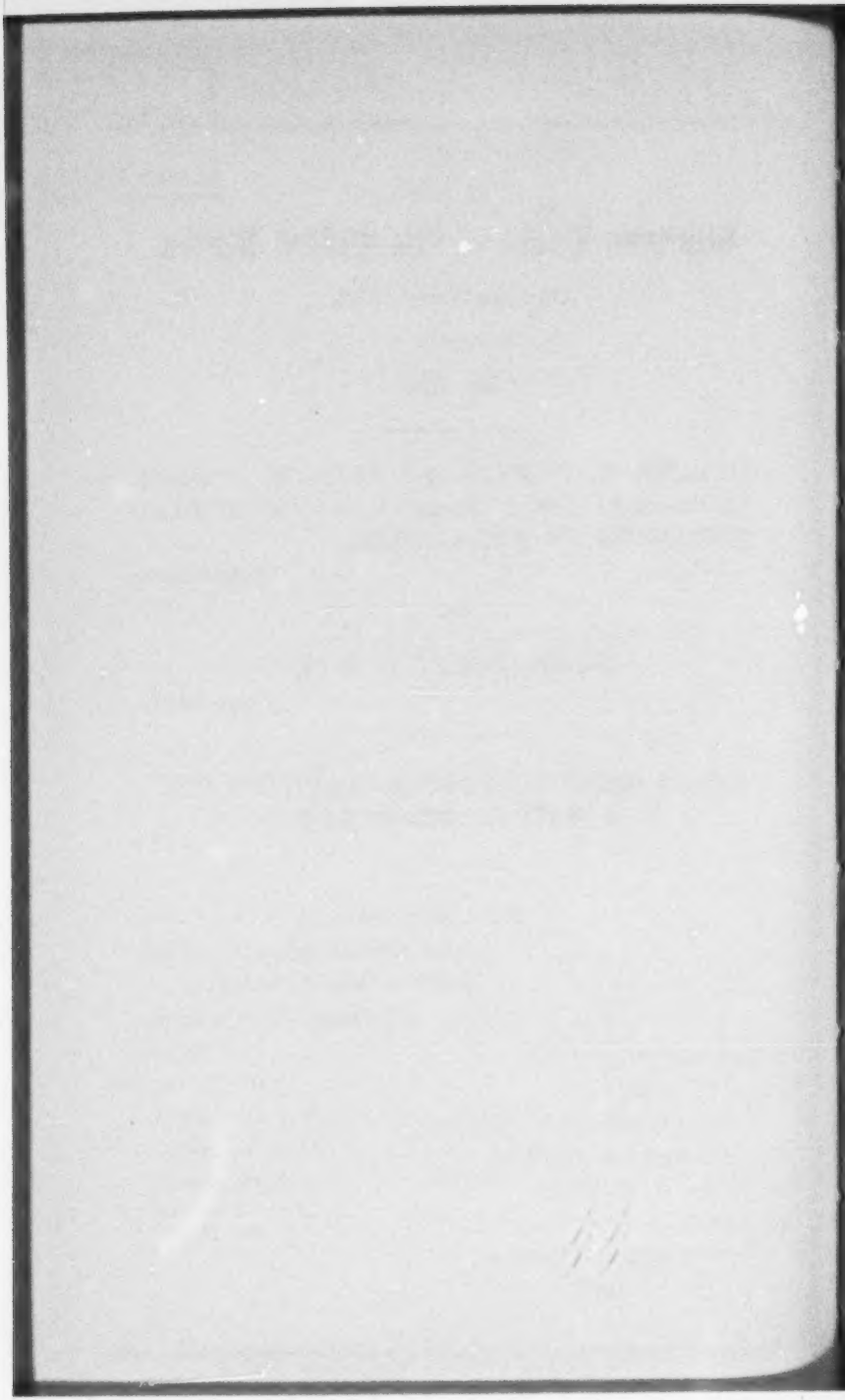
C. E. Pauley & Co., Inc., Indianapolis



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REPLY BRIEF SUPPORTING PETITION FOR A WRIT OF CERTIORARI

Respondent's brief in opposition contains a prejudicial misrepresentation on page 28. On the bottom half of this page is a picture of a truss, labeled "Portion of defendant's Exhibit 76 (Mack Truss)." This purports to be an enlargement of the truss shown in the upper lefthand corner of defendant's Exhibit 76. This it is not. Defendant's Exhibit 76, a page from Sears catalogue shown at page 52 of respondent's brief, should be examined for comparison.[1] The true Exhibit 76 (p. 52) differs from the purported portion on page 28 in the following particulars.

1. The catalogue page shown in Exhibit 76 is also shown in Exhibit SS (following page 21 in petitioner's brief).

1. The buckles on the leg strap and the waistband on Exhibit 76 (p. 52) are open metal loops; the buckles on the purported portion (p. 28) are shielded by an extension of the straps.

2. On Exhibit 76 (p. 52) there is no trade mark; while one exists on the purported portion (p. 28).

3. Exhibit 76 (p. 52) shows a plain waistband; while the purported portion (p. 28) shows a striped waistband.

4. On Exhibit 76 (p. 52), the leather squares holding the terminal buttons in the middle of the waistband have double stitching on each side; while the purported portion (p. 28) shows the stitching going completely around the squares.

5. On Exhibit 76 (p. 52) the boxes, blocking out part of the leg straps and showing the truss pads, are relatively farther apart on Exhibit 76 (p. 52) than on the purported portion (p. 28).

6. The holes shown on the center or shield portion of the truss (the black portion) are wider apart on Exhibit 76 (p. 52) than on the purported portion (p. 28).

Not only is the purported blow-up of Exhibit 76 on page 28 not a reproduction of Exhibit 76, it is not, as far as petitioners know, a portion of any exhibit introduced in evidence or in existence. The nearest likeness to the purported portion of Exhibit 76 (p. 28) is the truss shown in the upper lefthand corner of Exhibit TT—with the flaps or ears on each end of the central or shield portion of the truss (the black portion), blocked out. Exhibit TT is shown at page 54 of respondent's brief. It should be noted that on the purported portion of Exhibit 76 shown on page 28 the truss outline is sharp and well defined along the borders at the end of the shield portion (the black portion) at the point

where the flaps or ears are located on Exhibit TT, but is fuzzy throughout the rest of the truss outline.

Why is this error prejudicial? Sears' purpose in page 28 of its brief was, by comparing the advertisement of the Harad truss shown at the top of the page, Exhibit OO, with the purported advertisement of the substitute truss shown at the bottom of the page, to show certain purported differences in the advertising treatment of the two trusses. Exhibit OO was the Sears catalog advertisement of the Harad truss immediately prior to its advertisement of the Mack truss. Exhibit 76 was the first Sears catalog advertisement of the Mack truss.[2] It is apparently Sears' contention that these purported differences refute petitioners' contention that Sears did not take reasonable means to inform its customers of the substitution of the trusses[3] and the trial court's finding that Sears' use of the advertising cut of the truss in Exhibit 76,

> "displayed an entire want of care and a conscious indifference to the consequences in the form of confusion and mistake on the part of the purchasing public as to the source of origin of said substitute trusses in plaintiffs or that they came from the same source of origin as plaintiff's trusses."[4]

In Exhibit 76 (p. 52) as it exists in fact, in contrast to the purported portion shown on page 28, most of these purported differences disappear; and the marked similarity of the last catalogue advertisement of the Harad truss and the first catalogue advertisement of the Mack truss

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2. Exhibit TT is the second and later advertisement of the Mack truss.

3. Respondent's Brief, page 22.

4. Finding 40; R. 528. It should be noted that Exhibit 76 is page 800 of the Sears Chicago Spring and Summer catalog which is the page contained in Exhibit SS, referred to in the finding.

strongly support petitioners' claim and the trial court's finding.[5]

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5. Because of the serious nature of the matters here presented, petitioners are requesting the Clerk of the Court of Appeals to forward to this Court Exhibits NN, OO, SS, TT, 74 and 76.